

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR14-3024

QUALITY EGG, LLC (d/b/a Wright
County Egg and Environ), AUSTIN
DECOSTER (a/k/a Jack DeCoster), and
PETER DECOSTER,

TRANSCRIPT OF
SENTENCING

Defendants.

_____/

The Sentencing held before the Honorable Mark W. Bennett, Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 320 Sixth Street, Sioux City, Iowa, April 13, 2015, commencing at 9 a.m.

APPEARANCES

For the Plaintiff:	PETER E. DEEGAN, JR., ESQ. Assistant United States Attorney 111 7th Avenue Southeast Cedar Rapids, IA 52401 LISA K. HSIAO, ESQ. CHRISTOPHER E. PARISI, ESQ. US Department of Justice Consumer Protection Branch Suite 6400-S 450 Fifth Street Northwest Washington, DC 20001
For the Defendants Quality Egg and Austin DeCoster	THOMAS C. GREEN, ESQ. MARK D. HOPSON, ESQ. FRANK R. VOLPE, ESQ. Sidley Austin 1501 K Street Northwest Washington, DC 20005
For the Defendant Peter DeCoster:	STUART J. DORNAN, ESQ. Dornan, Lustgarten & Troia Suite 232 1403 Farnam Street Omaha, NE 68102
Also present:	Stacy Sturdevant, U.S. Probation Doug Czepa Todd Bucci
Reported by:	Shelly Semmler, RMR, CRR 320 Sixth Street Sioux City, IA 51101 (712) 233-3846

1 THE COURT: Thank you. Please be seated. Good
2 morning.

3 THE CLERK: This is Case Number 14CR3024, United
4 States of America versus Quality Egg, LLC; Austin DeCoster; and
5 Peter DeCoster. Counsel, please state your appearances.

6 MR. DEEGAN: Thank you. Your Honor, Peter Deegan on
7 behalf of the government. I'm joined by Lisa Hsiao and
8 Christopher Parisi from the consumer protection division of the
9 Department of Justice.

10 THE COURT: Good morning. Thank you.

11 MR. GREEN: Good morning, Your Honor. Tom Green on
12 behalf of Quality Egg and Jack DeCoster. I'm joined by Mark
13 Hopson and Frank Volpe, partners in Sidley Austin.

14 THE COURT: Good morning, counsel.

15 MR. DORNAN: Morning, Your Honor. Stu Dornan on
16 behalf of Mr. Peter Deegan (sic) who is present.

17 THE COURT: Mr. Dornan, you feel a little bit alone
18 all by yourself there?

19 MR. DORNAN: I --

20 THE COURT: You're used to working solo.

21 MR. DORNAN: I am, Judge. I'm used to being up
22 against it.

23 THE COURT: Okay. We have a lot of things to cover.
24 So before we get to the -- normally at this point I go over the
25 guideline calculations, but we have some things to do before

1 that. So why don't we make sure everybody's exhibits are
2 admitted. So, Mr. Deegan, why don't we start with the
3 government.

4 MR. DEEGAN: Thank you, Your Honor. So the government
5 will offer what we previously provided to the Court and counsel,
6 Exhibits 1 through 6 as well as 8 and 8A, and I'll just -- I'll
7 go through and explain what we have here.

8 * * * *

9 (Exhibits 1 through 6, 8, and 8A were offered.)

10 * * * *

11 THE COURT: That's fine. Thank you.

12 MR. DEEGAN: Exhibit 1 is a stipulation of the
13 parties. Exhibit 2 is an expert report from Dr. Davison.
14 Exhibit 3 is what we're referring to as the bound Wal-Mart
15 presentation, and I've actually provided to the Court this
16 morning the original bound presentation that the government
17 received via subpoena from Defendant Quality Egg, LLC.

18 Number 4 is the -- what we call the Crawford Wal-Mart
19 presentation. Number 5 are some notes from Mr. Crawford from
20 the Wal-Mart meeting. Number 6 is a May 14, 2010, e-mail with a
21 spreadsheet regarding salmonella testing. We had previously
22 marked Number 7 which was the claim of Harvest Insurance
23 Company. The government does not intend to offer that. That
24 claim, I got written confirmation from Harvest they're
25 withdrawing that claim.

1 Number 8 is a detailed restitution list. That has
2 some addresses and policy numbers in it, et cetera, so we're
3 offering that under seal.

4 8A is a redacted version of Number 8. And that we are
5 offering not under seal. I believe the copy I forwarded to the
6 Court incorrectly said that we were going to offer it under
7 seal. It had the little "under seal" sticker on it. That was
8 in error. I've taken that one off the copy I provided the Court
9 this morning.

10 THE COURT: And then who submitted the Crawford grand
11 jury testimony? Was that one of the defendants?

12 MR. DORNAN: I did, Judge.

13 THE COURT: Okay. So the only one that you're
14 offering under seal is 8?

15 MR. DEEGAN: That's correct, Your Honor.

16 THE COURT: Okay. Do the defendants have any
17 objection to any of the government's exhibits?

18 MR. GREEN: No objections for Quality Egg or Jack
19 DeCoster.

20 THE COURT: Okay, Mr. Green. Thank you.

21 MR. DORNAN: No, Your Honor. No objections.

22 THE COURT: Okay. Then Government's Exhibits 1
23 through 8A including 8 but Number 7 is withdrawn are admitted.
24 Exhibit 8 is admitted under seal.

25 * * * *

1 (Government Exhibits 1 through 6, 8, and 8A were
2 admitted.)

3 * * * *

4 THE COURT: I just wanted to state on the record kind
5 of what happened with regard to Exhibit 8. Exhibit 8 is a list
6 of individuals who have sought restitution in the case. And
7 Exhibit 8 contains identifying information including insurance
8 policy numbers. And the government requested and I think the
9 parties have requested -- nobody resisted. The government asked
10 to submit that under seal. I responded by e-mail saying that I
11 thought it was okay to seal 8 but that it would be more
12 appropriate to have a redacted version for public view that
13 included information but took out the personal identifying
14 information. And everybody agreed to that as I recall by
15 e-mail.

16 And Mr. Deegan took the lead -- actually I had
17 suggested some redactions, and I forgot about a couple of
18 things. Mr. Deegan then said, well, maybe we should redact
19 this. I ultimately decided what should be redacted, what should
20 not be redacted, but I felt very strongly that while some of the
21 information was important to redact because it revealed personal
22 identifying information that the public was entitled to some of
23 the information, so I ultimately made the decision.

24 The government executed my decision by creating
25 Government's Exhibit 8A which is the public version of 8 which

1 is under seal. Anybody want to make any additional record on
2 the redacted restitution Exhibits 8 and 8A?

3 MR. DEEGAN: Nothing from the government, Your Honor.

4 THE COURT: Okay. Anything from either defendant?

5 MR. GREEN: Nothing, Your Honor.

6 MR. DORNAN: No, Your Honor.

7 THE COURT: Okay. Why don't we move to defense
8 exhibits. We can start with Quality Egg, the corporation.

9 MR. GREEN: Your Honor, please, we have tendered
10 Exhibits A through J for admission in evidence. There is a list
11 of these exhibits which I can either submit to the Court or I
12 can read them into the record.

13 * * * *

14 (Exhibits A through J were offered.)

15 * * * *

16 THE COURT: Why don't you just go ahead and read them
17 into the record if you would be so kind, Mr. Green.

18 MR. GREEN: I will, Your Honor. Exhibit A is the
19 declaration of Charles L. Hofacre as is Exhibit B. Hofacre is
20 an expert in poultry disease.

21 Exhibit C is the declaration of Maxcy P. Nolan, an
22 expert in rodent control and rodent control measures.

23 Exhibit D is the opinion in United States v. Higgins,
24 H-i-g-g-i-n-s, out of the Eastern District of Pennsylvania dated
25 December 7 of the year 2011.

1 Exhibit E is a transcript of sentencing in the same
2 case.

3 F is a transcript of plea and sentencing in the case
4 of United States v. Hermelin, H-e-r-m-e-l-i-n, out of the
5 Eastern District of Mississippi (sic) in March of 2011.

6 Exhibit G consists of the final reports on DeCoster
7 Farms by the Iowa Veterinary Diagnostic Laboratory from Iowa
8 State University dated in August of 2010.

9 The three final exhibits, Your Honor, are letters.
10 Exhibit H is a letter from Dr. Charles Harding from Awake
11 America Ministries to Your Honor.

12 Exhibit I is a letter from Richard Martin,
13 Missionaries in the Philippines, to Your Honor.

14 And J is a letter from Dr. Kevin Wynne, Missionaries
15 to Mexico, that was written to Jack DeCoster which we are also
16 tendering to the Court. That concludes the list of exhibits.

17 THE COURT: Thank you, Mr. Green. Anybody have any
18 objections to -- well, that would be both Quality Egg and Jack
19 DeCoster's exhibits, Austin DeCoster's.

20 MR. GREEN: Yes, sir.

21 THE COURT: Thank you. Any objection?

22 MR. DORNAN: No objection, Your Honor.

23 THE COURT: Any objection from the government?

24 MR. DEEGAN: No objection.

25 THE COURT: Okay. All of those exhibits identified by

1 Mr. Green are admitted.

2 * * * *

3 (Defendant Exhibits A through J were admitted.)

4 * * * *

5 THE COURT: Are you requesting, Mr. Green -- I just
6 don't recall -- that any of those exhibits be submitted under
7 seal?

8 MR. GREEN: No, sir.

9 THE COURT: Okay. Thank you. Then all of those
10 exhibits are admitted. None of those are under seal.

11 Mr. Dornan.

12 MR. DORNAN: Thank you, Your Honor. We have 13
13 exhibits, Judge.

14 MR. GREEN: Would Your Honor indulge me just for a
15 moment?

16 THE COURT: Yes.

17 MR. GREEN: I made a -- I left off Exhibit K -- I'm
18 sorry; it was on the last page here --which is a letter from
19 Dr. Steve Christner, Calvary Baptist Church, to Your Honor under
20 date of April 8 of this year.

21 THE COURT: Yes.

22 MR. GREEN: Sorry, sir.

23 THE COURT: Thank you. Exhibit K is admitted.

24 * * * *

25 (Exhibit K was admitted.)

* * * *

THE COURT: I assume there's no objection.

MR. DEEGAN: No objection.

THE COURT: No objection, Mr. Dornan, to K?

MR. DORNAN: No objection.

THE COURT: Thank you.

MR. DORNAN: Thank you. For Peter DeCoster, Judge, we have 13 exhibits. The first exhibit would be a lab report done by Professional Group Services in 2009 concerning the testing of Salmonella.

The second exhibit is a Fed Ex delivery receipt. This has to do with the Wal-Mart presentation in 2008.

The third is a letter from Patsy Larson which is a -- who's an employee of Quality Egg and is submitted in support of Peter.

The next one is Chad DeCoster, letter in support of Peter, his son.

Kevin Wynne is another letter in support of Peter as Number 5.

Exhibit 6 is Patricia DeCoster. That's Mr. DeCoster's mom.

Number 7 is Heather Blau. That's another letter in support of Peter.

Number 8 is Jerry Crawford, another letter in support of Peter.

1 Number 9 is Richard Martin. Mr. Martin's a missionary
2 that Mr. DeCoster has done extensive work with around the world.

3 Exhibit 10 is a letter from Mike Nail, also supporting
4 letter.

5 Number 11 is a supporting letter from David Johnson.

6 Number 12 is the pretrial diversion agreement that was
7 entered into between the government and Mr. DeCoster a number of
8 years ago.

9 And Number 13 is the grand jury testimony of
10 Mr. Crawford. I would ask that that be filed under seal, Judge,
11 because it is grand jury testimony. This was in relation to a
12 contested issue concerning SQF certification.

13 THE COURT: Okay. Thank you. Any objection to any of
14 Peter DeCoster's exhibits by the government?

15 MR. DEEGAN: None from the government, Your Honor.

16 THE COURT: By the other defendants?

17 MR. GREEN: No, sir.

18 THE COURT: Okay. Thank you. All of Peter DeCoster's
19 exhibits are admitted. Exhibit 13 which is the grand jury
20 testimony of Lawyer Jerry Crawford is admitted under seal
21 because it's grand jury testimony.

22 * * * *

23 (Exhibits 1 through 13 were admitted.)

24 * * * *

25 THE COURT: Now, does anybody plan on calling any

1 witnesses?

2 MR. DEEGAN: None for the government, Your Honor.

3 MR. GREEN: None for Quality Egg or Jack DeCoster,
4 Your Honor.

5 THE COURT: Okay. Thank you, Mr. Green.

6 MR. DORNAN: No, Your Honor.

7 THE COURT: Okay. And that's in large part due to the
8 fact the parties spent considerable time in entering into a
9 stipulation.

10 MR. DORNAN: That's correct, Your Honor.

11 THE COURT: Because we went from I think saying a
12 five-day misdemeanor sentencing was probably not going to be
13 enough time to having no witnesses, so that's how cases go
14 sometimes.

15 When would you -- do we have at least one victim
16 that's present? And I'll ask if there are more, but is there at
17 least one victim present?

18 MR. DEEGAN: Yes. We have one victim representative,
19 the father of a victim.

20 THE COURT: Yes.

21 MR. DEEGAN: And that is the only victim
22 representative or victim that we have that we expect to be
23 addressing the Court today.

24 THE COURT: Okay. And we can do -- we'll do that for
25 all three sentencings I think, but we'll do that a little bit

1 later if that's okay unless -- do I need to accommodate the
2 victim's travel schedule? We can do it first thing if you'd
3 like or . . .

4 MR. DEEGAN: No, Your Honor. In fact, I think later
5 would be preferable to the father.

6 THE COURT: Okay. Okay. Does anybody have any
7 objection if we kind of do the sentencings combined except at
8 the very end when it's time for me to impose sentence we'll do
9 them one at a time, take up the allocution? I'm going to give
10 the corporation a right to allocution. They may or may not want
11 to take advantage of it. I don't think they're entitled to it,
12 but out of an abundance of caution, I'm going to do that. We'll
13 take all the allocutions, and then I'll just go individually and
14 impose the three sentences.

15 MR. DORNAN: That's acceptable to me, Your Honor.

16 THE COURT: Any objection, Mr. Deegan?

17 MR. DEEGAN: No objection from the government.

18 THE COURT: Mr. Green?

19 MR. GREEN: No objection, Your Honor.

20 THE COURT: Okay. Well, you're all so agreeable.

21 Okay. Let's go through the presentence reports just
22 to put on the record -- we'll start first with the corporation,
23 Quality Egg. Count 1 carries a probation period of one to five
24 years; Count 2, one to five years; Count 3, zero to five years;
25 and the guideline provisions for the probation are the same as

1 the statutory provisions.

2 The fine, Count 1 is a half a million dollars,
3 statutory provision; Count 2, six thousand seven hundred and
4 forty-five dollars six hundred and -- I'm sorry, \$6,745,683.20.
5 Count 3 is \$200,000. The guideline provision for Counts 1 and 2
6 are 4,800,000 to \$7,245,683.20. There is no guideline
7 calculation for Count 3. It's just the statutory provision.

8 Mr. Green, do you agree with those guideline
9 calculations for the defendant corporation Quality Egg, LLC?

10 MR. GREEN: Yes, I do, Your Honor.

11 THE COURT: Okay. And does the government agree with
12 those calculations?

13 MR. DEEGAN: Yes, Your Honor.

14 THE COURT: Okay. Let's move to Austin Jack DeCoster.
15 The total offense level is 4, criminal history category 1,
16 imprisonment range of 0 to 1 years by statute with the total
17 offense level 4, criminal history category 1. The United States
18 advisory guideline calculation is 0 to 6 months. Supervised
19 release is 0 to 1 year. Should that be imposed, probation, if I
20 impose that, is 0 to 5 years for the statutory provision, 0 to 3
21 years for the guideline provision. The fine range is a thousand
22 dollars statu -- I'm sorry, \$100,000 statutory maximum and a 250
23 to \$5,000 guideline range. Mr. Green, do you agree with those
24 calculations?

25 MR. GREEN: We do, Your Honor.

1 THE COURT: Okay. Thank you. And are those accurate,
2 Mr. Deegan?

3 MR. DEEGAN: Yes, Your Honor.

4 THE COURT: Thank you.

5 Turning to Peter DeCoster, they're charged
6 identically, so all of those -- all of the calculations that I
7 just indicated would be identical. Isn't that correct?

8 MR. DORNAN: That's right, Your Honor.

9 THE COURT: And do you agree with those calculations?

10 MR. DORNAN: I do, Your Honor.

11 THE COURT: Okay. Have each of the defense lawyers
12 had a full, fair, and complete opportunity to review the
13 presentence report with their respective client in your case,
14 Mr. Dornan, clients in the case of Mr. Green?

15 MR. DORNAN: I have, Your Honor.

16 THE COURT: And Mr. Green?

17 MR. GREEN: Yes, sir.

18 THE COURT: And with regard to the corporation, I
19 assume you reviewed that presentence report and the potential
20 sentences with Austin Jack DeCoster.

21 MR. GREEN: Yes, sir.

22 THE COURT: Because he's the corporate representative
23 for purposes of sentencing the corporation.

24 MR. GREEN: Yes, Your Honor.

25 THE COURT: Okay. Thank you. Here's what I'd like to

1 do now, but if the parties have a different agenda, I don't want
2 to leave anything out. But I thought we'd turn to the
3 constitutional issue on whether or not imprisonment is a
4 constitutionally permissible penalty in light of the motion and
5 the briefing filed by the individual defendants. It was
6 actually filed by Austin Jack DeCoster, but then Mr. Dornan
7 joined in it in one of his pleadings. Anybody have a problem
8 taking that up now?

9 MR. DEEGAN: No, Your Honor. And for the government,
10 I've asked my counsel Chris Parisi to address that issue with
11 the Court to the extent it needs to be addressed.

12 THE COURT: Okay. Thank you. Why don't we start with
13 you, Mr. Green.

14 MR. GREEN: Actually, Your Honor, if you will,
15 Mr. Hopson will address that.

16 THE COURT: Okay. Thank you.

17 MR. HOPSON: Good morning, Your Honor.

18 THE COURT: Good morning, Mr. Hopson.

19 MR. HOPSON: May it please the Court. The briefing on
20 this has been pretty extensive. We probed not only the case law
21 but other district court sentencing hearings. I'd like to do
22 two things.

23 THE COURT: And some state courts too.

24 MR. HOPSON: And some state courts too. I'd like to
25 do two things. I'd like to kind of trace the doctrine very

1 briefly and then talk about what there is in terms of precedent
2 for a pure responsible corporate officer offense because this is
3 not just strict liability. That term strict liability gets
4 thrown around. It has to do with scienter. And some of those
5 scienter offenses involve conduct that would put somebody on
6 notice that something's wrong like possession of hand grenades
7 or taking a weapon through airport security.

8 But the pure status offense really traces back to
9 1918, and it's actually Justice Cardozo who writes for the New
10 York Supreme Court -- New York Court of Appeals at that point
11 and says that the due process clause limits the power of the
12 legislature, not the court, but limits the power of the
13 legislature to take liberty without personal fault through the
14 acts or omissions of others.

15 When these defendants plead guilty to the responsible
16 corporate officer offense at issue here, they are taking
17 responsibility for the acts of others. There is no personal
18 conduct on their part at issue, and there is no scienter or
19 intent on their part at issue. There's no knowledge.

20 That case has been echoed in at least a half a dozen
21 other state highest courts that we cite at page 2 to 3 of our
22 reply brief.

23 It's also been cited very favorably in numerous
24 Supreme Court decisions. I think the best reasoned is Staples.
25 Staples, of course, involved the question of whether someone had

1 to know that the gun that they produced was an automatic weapon
2 in order to be liable for the offense. And admittedly, Your
3 Honor, that's a statutory interpretation question.

4 But the Supreme Court in Staples in 1994 looked to the
5 due process line of cases to inform that and to interpret the
6 statute to require that scienter because failure to do so would
7 give rise to a grave constitutional concern. And the court in
8 particular cites not only the case we just talked about,
9 Sheffield Farms, Justice Cardozo, but cites other authorities
10 and says imprisonment would not be compatible with the reduced
11 culpability for such regulatory offenses. These so-called
12 public interest offenses, Your Honor, again, are very different
13 than what is traditionally referred to as strict liability.

14 Staples also relied on the Supreme Court's decision in
15 Morissette which involved someone who perhaps inadvertently took
16 property off of government lands. And the court there said that
17 it would uphold and that it had upheld -- citing all the way
18 back to Dotterweich and Park which are the origin of the
19 responsible corporate officer doctrine, said it had upheld those
20 cases in the past because, quote, the penalties are relatively
21 small and conviction does no grave damage to an offender's
22 reputation. That is what Justice Blackmun was writing about in
23 1960 for the Eighth Circuit in the case we cite in which he goes
24 through the analysis of strict liability laws.

25 Again, I won't dwell on this at length. But he

1 says -- and it is, I should say, a due process analysis, not an
2 Eighth Amendment analysis but a due process analysis. Then
3 Judge Blackmun said the due process clause would not be violated
4 by a lack of showing of scienter in that case because he says
5 the due process clause is not implicated, quote, where the
6 penalty is relatively small and where the conviction does not
7 gravely besmirch.

8 Now, I cannot cite you a case, Your Honor, that
9 specifically holds on point as a precedent that sentencing to
10 any term of incarceration for a RCO offense is unconstitutional.
11 But the law and the line of cases here is quite powerful. And
12 the courts do rely on these due process clause principles either
13 to avoid raising the constitutional issue by requiring a showing
14 of scienter as in Morissette or Staples or to avoid
15 incarceration. And that's the second point that I would like to
16 turn to now.

17 We tried not only to scour the reported case law but
18 to look at what other district courts had done. And at the end
19 of the day we found two cases, two -- two groups of cases
20 because one involves multiple defendants where district courts
21 such as yourself have sentenced someone to some restriction on
22 liberty based upon a responsible corporate officer offense.

23 One of those is the Hermelin case which is Exhibit
24 12F. And because we're relying on a transcript, we submitted it
25 to you as an exhibit. The government in its opposition argues

1 that it's a little ambiguous what the court is relying on at the
2 sentencing, and I agree with them. It is a little ambiguous.
3 But if you read the whole transcript, Mr. Hermelin who was
4 sentenced ultimately to 17 days said -- had the following thing
5 said to him by the judge: He said, quote, but what I see when I
6 see Mr. Hermelin is greed, abuse of power, recklessness. This
7 is at page 41 of the transcript. He had this company, this
8 great company, with 1,700 employees and then was alerted that he
9 was sending pills all over the country that were almost twice
10 the strength of what they should have been.

11 That was a case, Your Honor, in which Morphine pills
12 were adulterated and mislabelled and shipped in interstate
13 commerce. There was a sentence there under a pure RCO. But
14 we've looked at the pleadings. The constitutional issue we've
15 raised with you today, Your Honor, was not before Hermelin. So
16 I think we can put that aside.

17 The harder line of cases are the cases involving this
18 company Synthes which both sides write to you about. And I want
19 to be very brief, but I just want to be clear about what the
20 judge -- and in this case it was Judge Davis in the Eastern
21 District of Pennsylvania -- found in those cases because what
22 the judge found in those cases, Your Honor, is not present here.
23 There's an unpublished opinion that we have submitted to you as
24 Exhibit 12D. And again, this involved avoiding FDA clinical
25 research requirements. They put the drug out without going

1 through clinical tests. It was an injectable medical device for
2 spinal cord injuries that resulted in some deaths.

3 The court said -- and this again is at page 8 -- the
4 court well understands and respects historical sentencing
5 practices for responsible corporate officers under the Park
6 doctrine. We agree with the sentences previously imposed on the
7 conduct before those courts. This case stands alone. Unlike
8 Park, this matter does not involve holding an unaware corporate
9 executive accountable for vermin in a warehouse. And then the
10 court goes on to say Higgins' case stands apart from other Park
11 doctrine cases because the criminal conduct at issue is his own.
12 It was not, like this case, purely vicarious.

13 And finally in Exhibit 12E, the court in the
14 sentencing of another Synthes executive, Mr. Michael Huggins,
15 says the following at page 73. The judge talks about all the
16 case law and the argument that is made to him about the due
17 process clause. And he says, But you need to understand that
18 the reason why I do what I'm about to do is not because you're
19 the responsible corporate official who is standing up and taking
20 the burden for things that happened on his watch that he could
21 have had the power to stop that he didn't stop. That's the
22 typical case. That's the instance where those events -- where
23 most people have previously been sentenced. This is more.
24 You're being punished because of decisions you personally made
25 and participated in because this whole course of events went

1 from the day it was conceived from the top down.

2 This is, Your Honor, in the words of Judge Davis, the
3 typical case. The only conduct pled to is the three paragraphs
4 in the defendants' plea agreement. There is no claim that they
5 had knowledge. There is no claim that their employees had
6 knowledge. There is no conduct that is admitted to. It is
7 purely at the end of the day as far as I know a unique provision
8 in the U.S. criminal code that penalized status. And we submit,
9 Your Honor, that given the precedents before you, given the
10 record before you, the due process clause does impose
11 limitations on doing anything that would impair these
12 defendants' liberty given the record before the Court.

13 Any questions, Your Honor?

14 THE COURT: I do. Let's start with the Nolan case
15 from the Iowa Supreme Court that you cited in your brief.

16 MR. HOPSON: Yes.

17 THE COURT: Are you familiar with the Nolan case?

18 MR. HOPSON: I am, Your Honor.

19 THE COURT: Have you actually read it?

20 MR. HOPSON: I think I did, Your Honor, at some point.

21 THE COURT: Or did some associate read it and write
22 the brief?

23 MR. HOPSON: No, I read everything that --

24 THE COURT: Because it doesn't stand for what you s --
25 claim it stands for. Matter of fact, they reserve the issue.

1 MR. HOPSON: They did. And we don't say it's a
2 holding. We say it's upholding the conviction of the \$20 fine
3 but reserving and emphasizing that the violator may be subject
4 to imprisonment is not before us. So we put the point that it's
5 not before the court in the parenthetical when we cited the
6 case.

7 THE COURT: So what's the purpose of citing the case?

8 MR. HOPSON: Because the court is reserving the issue.
9 It's a see also cite that says the court reserved that issue,
10 and presumably the court reserved the issue because it believes
11 there's a different question there if imprisonment was before
12 the court.

13 THE COURT: What about the -- okay. Let me ask you
14 about the -- let's see -- the Minnesota case -- no, Koczwara,
15 the Pennsylvania case.

16 MR. HOPSON: Right. Again, that's another case, Your
17 Honor, where we're making clear that what the holding is is
18 upholding the fine but reserving judgment on the separate issue
19 under the due process clause. As I said to you when I stood up
20 to make this argument, Your Honor, there's not a lot of cases
21 directly on point.

22 THE COURT: No, I understand that.

23 MR. HOPSON: This is kind of a rare beast.

24 THE COURT: Under which due process clause?

25 MR. HOPSON: Under the state's due process clause in

1 that case. But I don't think that Minnesota due process clause
2 as far as the liberty provisions go is different than the
3 federal clause.

4 And I should emphasize too, I mean, we didn't make
5 this as clear as we should have. This is not a question of
6 substantive due process. The courts that are addressing this
7 seem to be addressing it as procedural due process and limits on
8 what the legislature can do in the circumstances in which
9 there's a deprivation of liberty.

10 There are a lot of cases, Your Honor, that fly under
11 the rubric of strict liability. And a lot of them are cited in
12 the government's brief, and some of them are cited in ours. But
13 they're distinguishable because they involve individual conduct.
14 Even some of the Food, Drug, and Cosmetic Act cases that we
15 argue about between the opposition and reply involve things like
16 a defendant who has an RCO defense but pleads to another count
17 of aiding and abetting. And, of course, we all know if there's
18 an aiding and abetting count, by definition there's scienter.

19 The cases that are closest as I talked to is what
20 Judge Davis wrestled with in the Synthes cases, the Higgins and
21 Huggins. I was not -- I'm not able to tell you what the conduct
22 at issue was there, Your Honor, because the plea agreements
23 remain under seal. We couldn't get to them. So I don't know
24 what the defendants agreed to in those cases.

25 But when you add it all up, I do believe that the

1 question squarely presented to you really is a novel one because
2 the conduct before you is so limited. There are only three
3 paragraphs in the statement of facts that these defendants
4 agreed to, and those paragraphs specifically say we are
5 responsible corporate officers, that's all.

6 THE COURT: But it goes beyond the plea agreement,
7 though, because -- which is something I had wished I had raised
8 earlier, and maybe you're not the lawyer to raise it with. But,
9 you know, you filed a series -- when I say you, Quality Egg and
10 Austin DeCoster took the lead on filing objections. You filed
11 extensive objections. And then in document 89 that was filed,
12 you withdrew all of the prior objections as I understood 89 and
13 made very, very specific objections so that the vast majority of
14 the numerous paragraphs in the presentence report in my view are
15 unobjected to.

16 So you can talk about the limited three paragraphs in
17 the plea agreement. But we're talking about probably 30 or 40
18 paragraphs in the presentence report, and I know there are some
19 objections largely along the lines of knowledge of the
20 individual defendants.

21 MR. HOPSON: Right.

22 THE COURT: But there's a lot of -- there's a lot of
23 conduct by corporate employees that these two individual
24 defendants were over where there's no objection.

25 MR. HOPSON: I have two responses to that if you'll

1 allow it, Your Honor.

2 THE COURT: Okay. Yes.

3 MR. HOPSON: One is a factual response. The
4 withdrawing and the narrowing was part of the process of working
5 with Mr. Deegan and the government's lawyers to try to narrow
6 the issues. As you pointed out when you took the bench, this
7 started with a pretty wide-ranging factual dispute. Almost
8 everything has been resolved through stipulations which the
9 Court made reference to and Mr. Deegan's e-mail of last Tuesday
10 in which he doesn't contest certain things where the lack --

11 THE COURT: Stipulation, yeah.

12 MR. HOPSON: Yeah, there's a little bit of the facts
13 are in equipoise. Mr. Green is going to address the couple of
14 things that are still hanging out there, but there's a legal
15 response I'd like to make too.

16 If for purposes of argument you accept that the due
17 process clause puts a ceiling on incarceration and that ceiling
18 is zero, then Booker and Apprendi and the whole line of cases
19 striking down the guidelines and making them advisory would come
20 into play. And those cases say a court cannot rely on facts not
21 found by a jury nor accepted, agreed to, stipulated to by the
22 defendant to enhance a sentence.

23 So if we are right about the due process clause and we
24 look at it through that lens, we don't think those other facts
25 are relevant.

1 THE COURT: I think that's a frivolous argument. For
2 starters, you've waived your Apprendi argument by virtue of your
3 plea agreement. You indicated in the plea agreement that I
4 could decide facts by a preponderance of the evidence. That's
5 what your plea agreement says. To me it's a clear waiver of the
6 Alleyne/Apprendi line of cases.

7 Secondly, if you're right about the constitutional
8 issue on due process that I can't incarcerate somebody, that
9 renders moot your Apprendi argument because I can't incarcerate
10 somebody as a matter of due process or the Eighth Amendment.
11 You never even reach the Apprendi issue.

12 But the real reason why I think you're wrong on
13 Apprendi -- I think you're wrong for all of those reasons -- is
14 because it doesn't raise the statutory sentence or the guideline
15 sentence.

16 MR. HOPSON: Right.

17 THE COURT: It doesn't increase it.

18 MR. HOPSON: Let me -- let me respond to that, Your
19 Honor.

20 THE COURT: Yeah.

21 MR. HOPSON: Obviously in a traditional guidelines
22 setting, the Court has the authority without regard to Apprendi
23 and Booker and that whole line of cases to sentence within a
24 range; okay?

25 With respect to what we agreed to in the plea, we

1 preserved our due process argument specifically in the plea
2 agreement. And as you said --

3 THE COURT: You didn't preserve your Apprendi and
4 Alleyne argument because you didn't even make it till after you
5 filed your reply brief.

6 MR. HOPSON: Well, maybe we're -- maybe this is
7 semantics at some level. I guess what I'm saying is if we're
8 right about the due process and it really does impose those
9 limits for this offense, then none of that really matters.

10 THE COURT: Exactly, which is why your Apprendi
11 argument is nonsense because if you're right on the due process
12 clause, you can't turn around and then say, well, gee, there's
13 an Apprendi issue because you couldn't have given incarceration
14 unless the jury made that finding of fact. But if the jury made
15 that finding of fact which is all Alleyne and Apprendi say, I
16 still couldn't impose incarceration because the due process
17 clause bars it. So you can't use that argument to then
18 bootstrap the reverse in an Apprendi argument. It's silly.

19 MR. HOPSON: Well, I went down the wrong path here,
20 Your Honor. I think we do both agree without my remarks
21 misleading you that if the due process argument is right --

22 THE COURT: End of story.

23 MR. HOPSON: -- end of story, the other conduct
24 doesn't matter.

25 THE COURT: But you really think you can use that to

1 bootstrap an Alleyne and Apprendi argument?

2 MR. HOPSON: I think that Apprendi and Booker stand
3 for the proposition that a sentence cannot be enhanced beyond
4 the sentence that could be imposed for the conduct agreed to
5 without either a jury finding or an agreed-upon statement of
6 facts. I think that's the broader principle there. Whether you
7 say that that baseline, as you do, is the statutory baseline or
8 you say, as I do, it's the constitutional baseline, I think
9 we're both getting to the same result, and I think maybe the way
10 I framed my argument has led to this colloquy that probably
11 doesn't matter very much at the end of the day.

12 THE COURT: Well, let's get back to your plea
13 agreement and why you didn't waive any Apprendi or Alleyne
14 argument.

15 MR. HOPSON: I think, Your Honor, it's put -- bound up
16 as you pointed in the due process argument which we didn't
17 waive. We specifically reserved the right to address the
18 constitutional limits on sentencing as a matter of due process
19 in the plea agreements.

20 THE COURT: But here's what you agreed to in the plea
21 agreement. Both defendants agreed to be sentenced based on
22 facts to be found by the sentencing judge by a preponderance of
23 the evidence, and agreed facts essential to the punishment need
24 not be charged in the indictment or information, two, proven by
25 a jury, or, three, proven beyond a reasonable doubt. That's all

1 a quote. That's from Austin DeCoster's plea agreement,
2 paragraph 8, and Peter DeCoster's plea agreement, paragraph 8.

3 So I'm having a hard time understanding how that
4 doesn't waive at least an Alleyne/Apprendi issue.

5 MR. HOPSON: I don't think it matters whether it
6 waives that specific issue if the due process argument is in
7 play which is probably a better way of saying what I'm trying to
8 say. If the due process cl -- go ahead. You have a question.

9 THE COURT: Well, you're right if I agree with you on
10 the due process argument.

11 MR. HOPSON: Right.

12 THE COURT: But what if I don't?

13 MR. HOPSON: If you don't agree with me on --

14 THE COURT: Then you could still have an
15 Apprendi/Alleyne argument it seems to me.

16 MR. HOPSON: We don't, Your Honor.

17 THE COURT: But you don't.

18 MR. HOPSON: As we said -- and I think it's quite
19 clear in our opening brief here -- if we're not -- if there is
20 no due process limitation which I think would be extraordinary
21 given the status offense, then we're in the same rules of
22 guideline sentencing that every other defendant is in. It's
23 only the due process clause that makes this particular unique
24 offense in the criminal code different.

25 THE COURT: Okay. Thank you. Anything else you'd

1 like to add?

2 MR. HOPSON: No. Thank you, Your Honor.

3 MR. GREEN: I'm wondering if you would allow me the
4 extraordinary privilege of just adding a few couple --

5 THE COURT: I would. Normally I have World Federation
6 of Wrestling tag team rules. Well, I have the opposite. You
7 can't tag off. And I didn't see you hit his hand as you were
8 going up there. But I'll waive the tag team rule for purposes
9 of this case.

10 MR. GREEN: That's --

11 THE COURT: You've come a long way. You've all put in
12 a tremendous amount of work on this. I'll tell you this. I've
13 sentenced 4,500 plus defendants in 4 different jurisdictions
14 over 20 years. I've had a -- my longest sentencing has lasted 7
15 days, 50 some contested witnesses. I've put in more time on
16 these sentencings than I have in any other couple sentencings
17 combined.

18 So you can take all the time necessary. It's an
19 important matter.

20 MR. GREEN: Thank you, Your Honor. And we all -- I
21 know I speak for the government as well. We all appreciate the
22 effort that you've put into this matter.

23 The one point I want to make is that there may be a
24 problem emerging that I'm -- I see here from conflating these
25 three sentencings. And that, you know, is activated a little

1 bit by Mr. Hopson's final remarks.

2 When you look at the sentencing configuration for my
3 client Austin DeCoster, for example, we're into an analysis of
4 what is really related conduct because the plea agreement cabins
5 exactly what -- the conduct that is at the core of that
6 transaction.

7 Now, the government -- the government in its kind of
8 initial approach to this case, in its initial filings and its
9 memorandum of the offense and so forth, elaborated on a range of
10 incidents and activity and conduct which they impliedly if not
11 explicitly believe qualifies as related conduct.

12 It may indeed qualify as related conduct when it comes
13 to sentencing the corporation. But two points. It doesn't fall
14 into the classic definition of related conduct under the
15 guidelines when you look at Jack DeCoster. That classic
16 configuration is that related conduct is conduct which is
17 relevant to sentencing, and it's limited to conduct which the
18 defendant himself committed, aided, abetted, counselled,
19 commanded, induced, procured, or willfully caused.

20 Now, through this winnowing process that Mr. Hopson
21 also mentioned, virtually every one of those satellites of other
22 conduct that he articulated and identified initially in his --
23 in his opening description of this case have been in practical
24 terms stipulated away either explicitly in the stipulations or
25 by further concessions from the government in the now famous

1 e-mail of April 6 if I have the date right.

2 So while you're absolutely right about your
3 prerogatives and what the Court may do if it sees fit, I have no
4 quarrel with that whatsoever. I do believe that when we're in
5 the arena of these two individual's sentences when we look to
6 this other conduct, these other transactions, it has to fall
7 within the rubric of related conduct. I don't think it falls
8 within that. I don't think it's related.

9 The government may argue to the contrary. But even if
10 it were related, the government has basically in agreement with
11 the defense stipulated that these two gentlemen, certainly my
12 client, virtually had no knowledge of any of those particular
13 transactions that are out there as the related conduct.

14 So I think that has to be taken into account. It's
15 not -- this point is really not particularly germane to the
16 argument on the motion. But because we got into these other
17 observations that you made from the bench, I felt that I should
18 at least rise and alert you to --

19 THE COURT: Well, I think you're right, and I
20 appreciate the fact that you rose and alerted me to it. And
21 here's what I'm having difficulty with.

22 MR. GREEN: Yes, sir.

23 THE COURT: It's footnote 1 in document 89.

24 MR. GREEN: Would you -- is that -- I don't have that
25 number.

1 THE COURT: It's your --

2 MR. GREEN: Thank you.

3 THE COURT: I always love it when lawyers reserve
4 things, you know, like interrogatory answers, without waiving
5 the following objections. So footnote 1 as I recall it in
6 document 89 -- document 89 is your -- where you withdraw all
7 prior objections except for the ones set forth below. You have
8 some very specific objections. For whatever reason, the first
9 United States probation officer assigned to this case did not go
10 through the presentence report and update it, but I went through
11 and took every one of your objections, read them broadly, then
12 highlighted in yellow in the presentence report every possible
13 phrase in every paragraph that that objection could cover. I
14 didn't have any problem doing that. I mean, it took a little
15 while, but I didn't really understand what footnote 1 was.

16 MR. GREEN: Well, I think footnote 1 --

17 THE COURT: Is the argument you just made.

18 MR. GREEN: -- captures the argument I just made, yes.

19 THE COURT: So then how am I supposed to know what you
20 think is not relevant conduct and what isn't?

21 MR. GREEN: Well, I don't think any of the -- I mean,
22 I don't think that any of the -- I can go -- I can get my file
23 back here if this is the appropriate time to do it.

24 THE COURT: See, that's the problem with objections
25 like that. We reserve the right to object to anything on

1 relevancy grounds, but you never -- I mean, you did in the
2 earlier objections. You objected to a few things, but how am I
3 supposed to know today what you're objecting to because you
4 never came forward and told me?

5 MR. GREEN: Because I think that that process, if I
6 may, has been eclipsed by the subsequent discussions with the
7 government where we took each of those categories -- I'm not
8 sure what the proper reference is but these other instances of
9 misconduct that the government put into its initial, you know,
10 statement of offense, and we worked through those. And
11 basically where we ended up in offering to you, this Court, a
12 stipulation is that the conduct on the part of my client, my
13 personal individual client, Austin DeCoster, is not conduct that
14 he knew anything about and the transactions he knew nothing
15 about. And that takes it out of the definition of, I think,
16 relevant conduct out of the guidelines. And I think it's kind
17 of a two-step, three-step process like that.

18 So the --

19 THE COURT: But you didn't really object that it
20 wasn't relevant conduct within the guidelines until I get to
21 your briefs where you do that. And then you don't actually
22 object to anything specific. You just give me this
23 well-recognized black letter law that relevant conduct doesn't
24 include everything, and you cite the relevant conduct guideline,
25 and I get all that but . . .

1 MR. GREEN: I think we were trying to do the Court a
2 favor. It may have been misplaced. I think rather than --
3 rather than burrow down into whether this particular allegation
4 falls within the guideline definition of relevant conduct,
5 et cetera, we kind of tackled the overarching issue of just
6 whether or not it has any meaning whatsoever for purposes of the
7 definition. And that really is based on do these individual
8 defendants know about this particular area of misconduct or
9 alleged misconduct, did they participate in it and so forth?
10 And that we tried to resolve through these stipulations. We
11 kind of get to the same place through a different road but . . .

12 THE COURT: Well, here's the place where I think you
13 got to, and I think we probably all agree on it, at least with
14 regard to -- well, the only knowledge at issue anymore based on
15 the government's e-mail, the only thing where I think knowledge
16 is at issue is the single incident about which report was
17 present at the Wal-Mart meeting and whether or not Peter
18 DeCoster had knowledge of some of the things in that -- if you
19 can -- you can't agree on which report was actually there. One
20 had inaccuracies, and one didn't. Even if I find that the one
21 had inaccuracies, I'm not sure I would be compelled to find that
22 Peter DeCoster knew of those inaccuracies. But anyway, that's
23 the only knowledge issue that I think is actually left
24 regardless of what footnote 1 in document 89 means because of
25 the e-mail.

1 MR. GREEN: I agree.

2 THE COURT: Okay.

3 MR. GREEN: I agree. And I'm not equipped to speak to
4 that.

5 THE COURT: Right. But at least from your client --
6 your two clients' perspectives -- well, the corporation and
7 Austin DeCoster, there isn't -- the government isn't alleging
8 any more -- any knowledge on any of the incidents.

9 MR. GREEN: Correct, sir.

10 THE COURT: Isn't that right?

11 MR. GREEN: That is right, sir.

12 THE COURT: Isn't that right, Mr. Deegan?

13 MR. DEEGAN: On specific instances of bad acts that
14 happened at the company, yes. We're not alleging actual
15 knowledge on the part of the individual defendants.

16 THE COURT: Right. Now, I could have found actual
17 knowledge based on the stipulation, and I'm not bound by the
18 government's withdrawal in that footnote, am I?

19 MR. GREEN: I don't think the stip -- I don't think
20 the stipulation provides a predicate for you to find that Austin
21 DeCoster had knowledge of any of these specific allegations. I
22 think the stipulation is --

23 THE COURT: Well, I could find, for example, that he
24 had knowledge after the fact of the bribe.

25 MR. GREEN: I don't think so. I don't think so. I

1 think that the --

2 THE COURT: Well, I think your better argument is you
3 don't want me to make that finding and that I should -- and that
4 I should go along with the government's position. Isn't that a
5 more preferable argument?

6 MR. GREEN: Well, that's certainly the truth.
7 However, I do believe that if you -- if the Court were to focus
8 on the literal language of the stipulation, it does -- it
9 provides no clarity to the allegation that Jack DeCoster,
10 Mr. Austin DeCoster, knew about the bribe after the fact. In
11 fact, it's because there is no clarity and because there is
12 continuing, you know, ambiguity about that I think --

13 THE COURT: Well, there's ambiguity, but I could
14 resolve it from the stipulation if I wanted to.

15 MR. GREEN: I don't think so because I don't think
16 there's -- I don't think there's anything in that stipulation
17 that would adequately serve as a factual predicate for you to do
18 that. And what also is very telling here, Your Honor, is that
19 when you get to the government e-mail -- when you get to the
20 government's e-mail and the government makes further statements
21 about the bribe, let me just read that if I may. This is the
22 final paragraph to Mr. Deegan's e-mail. The government relies
23 upon paragraphs 11 and 12 of the stipulation. In view of the
24 conflicting evidence and credibility considerations, the
25 government will not ask the Court to find that Jack or Peter

1 DeCoster knew of the bribes at any particular time.

2 Now, that reference to credibility considerations I
3 think is rather significant because that's the credibility of
4 their witnesses, not ours. They have two cooperating witnesses.
5 They give conflicting testimony. I think it would be very hard
6 for a court to try to look at the very little snippets of
7 testimony on their part that pertain to Austin DeCoster and come
8 to any conclusion about the facts. The government --

9 THE COURT: Well, that actually isn't my question.

10 MR. GREEN: I'm sorry.

11 THE COURT: My question is do I have the power to do
12 that.

13 MR. GREEN: Well --

14 THE COURT: And, of course, I do because nobody put a
15 gun to your head and made you stipulate. I could have listened
16 to all this testimony for five days. I didn't complain about
17 that. You all decided to enter into a stipulation. And I could
18 take that stipulation and decide those contested matters without
19 being able to determine the credibility because you all deprived
20 me of the right to determine the credibility by agreeing to
21 enter into a stipulation and not presenting live evidence. And
22 I always have a preference for live evidence.

23 So I think I absolutely have the power to decide those
24 contested matters notwithstanding the government's e-mail if I
25 want to do that. There are some prudent reasons why one might

1 not want to do it. For example, how in the heck can you
2 determine credibility over whether something was said based on
3 a -- one paragraph that simply says he said this and he said
4 that and you have no way of knowing the context, how it was
5 said, who said it or judge -- or be able to judge the
6 credibility of the actual witnesses? I understand there are
7 reasons that caution against doing that. That wasn't my
8 question. My question was I feel I'm free to do it. Do you
9 disagree with that?

10 MR. GREEN: Your Honor, I never really want to wrestle
11 with the Court.

12 THE COURT: No, you should.

13 MR. GREEN: And I --

14 THE COURT: I'm going to give you a lot more to
15 wrestle with.

16 MR. GREEN: The Court has very expansive powers. I
17 think the Court can reject a stipulation. I think a court could
18 say, gentlemen, I'm not going to abide, I'm not going to
19 consider this.

20 THE COURT: Okay. I'll do that. Then I'll set it in
21 two months for a five-day contested sentencing, and I'll listen
22 to the evidence.

23 MR. GREEN: You could.

24 THE COURT: Do you want me to do that?

25 MR. GREEN: No, sir, I do not. All of that --

1 THE COURT: See, you want it both ways. You don't
2 want me to hear the evidence, but you don't want me to resolve
3 anything based on a stipulation either because you got a good
4 deal out of that stipulation when the government sent that
5 subsequent e-mail.

6 MR. GREEN: Well, here's -- let me make this
7 observation.

8 THE COURT: Do you disagree with that?

9 MR. GREEN: No, no, I got a good --

10 THE COURT: Do you disagree that the subsequent e-mail
11 which I provoked by my e-mail saying are these things really
12 being contested, I mean, are you really going to have me decide
13 something based on a paragraph stipulation -- then the
14 government withdrew it. So you're in pretty good stead because
15 of that.

16 MR. GREEN: I am. And --

17 THE COURT: So would you like to go back to an
18 evidentiary hearing?

19 MR. GREEN: No, I don't want to go back to an
20 evidentiary hearing.

21 THE COURT: Okay. I would.

22 MR. GREEN: Well, I'm hoping that we can persuade you
23 not to. And let me just add that the government is very
24 involved in this ca -- the government had an extensive,
25 extensive investigation into this case. These gentlemen to my

1 left probably know more about this case than any of the rest of
2 us in this courtroom. They are the ones that had, you know,
3 intimate access to the witnesses. They're the ones who
4 conducted countless interviews. Numerous individuals cooperated
5 with them or at least allowed themselves to provide evidence.
6 The grand jury proceedings went on at length. They're in a
7 pretty good position, I think, to tell this Court things about
8 the strength of their case and the quality of the evidence.

9 And I believe that as officers of the court when they
10 report to you in the e-mail as Mr. Deegan did in response to
11 your question that they are giving you the very best and most
12 accurate assessment of the case as they see it, and in that
13 process they have indicated that they do not have evidence to
14 indicate that Austin DeCoster had personal knowledge of this,
15 that, and so forth. I think you were right a few minutes ago
16 identifying the last kind of zone of contested allegations.

17 And so I would implore you, I would ask you to take
18 that into consideration and to accept that. And if you are in
19 the mind to do that, if I'm able to convince you to do that --
20 and I would suspect that the government joins me insofar as they
21 want you to be in a position and to feel comfortable about
22 resolving this case this morning -- then we don't have to
23 struggle -- as I began this argument when I stood up, we don't
24 have to struggle with what is really relevant conduct or not.
25 We've kind of worked our way through that hopefully for the

1 benefit of Your Honor. So I just -- I just wanted to add those
2 remarks to Mr. Hopson's.

3 THE COURT: Thank you, Mr. Green.

4 MR. GREEN: All right, sir. Thank you.

5 THE COURT: Mr. Deegan?

6 MR. DEEGAN: Thank you, Your Honor. I think we did
7 get into perhaps more factual kind of dialogue about what the
8 record represents. I'm happy to perhaps try to dive into some
9 of those issues with the Court now.

10 The government's -- on the due process claim, the
11 government can rest on its brief. I don't know that there's
12 much more that we need to say on that.

13 I guess I would like to dive into the e-mail issue if
14 the Court thinks this is the appropriate time. You know, as the
15 Court knows, we entered into this extensive stipulation with
16 many, many, many -- originally many, many, many disputed facts.
17 And the attorneys sat down, and we really worked hard to try to
18 narrow them into something that wouldn't cause the Court to have
19 to -- well, waste the Court's time, quite frankly. And I know
20 that the Court's perfectly happy to hear evidence that the
21 parties want to put on. But we did our assessment, and we
22 decided that these stipulations really were what the state of
23 the record was and that at the end of the day this is where the
24 record would end up. So we did our best to try to narrow the
25 issues for the Court.

1 As far as the e-mail goes, I know that the Court was
2 not happy with my not raising sort of precisely what our
3 position would be earlier. But we did say in response to the
4 Court's question that our argument is that this happened on
5 their watch, the bribery specifically, and that --

6 THE COURT: Well, a lot happened on their watch.

7 MR. DEEGAN: Far more than just the bribery. And I do
8 want to talk about just a couple factual issues too. But just
9 to round out the bribery discussion, you know, Mr. Green does
10 say that we --

11 THE COURT: I mean, the prior immigration matter
12 happened on their watch. The illegal labeling of the eggs
13 happened on their watch. The backdating of the time that the
14 eggs were processed happened on their watch. Incredible
15 unsanitary conditions happened on their watch. I mean, there's
16 a litany of things that happened on their watch.

17 And so what I'm str -- and I made a list, and it's a
18 long one, and it's right out of the presentence report. It's
19 not like I had to go very far to find these things. I mean,
20 there's a litany of shameful conduct in my view that happened on
21 their watch.

22 MR. DEEGAN: Absolutely, Your Honor. And it's --

23 THE COURT: But what's the relevance of it?

24 MR. DEEGAN: Well, because they're responsible
25 corporate officers, it was their responsibility to detect and

1 prevent these things from happening. And we stuck to, in the
2 government's view, conduct at the company, misconduct at the
3 company, that had a direct relationship to Salmonella.

4 One thing that I want to make very clear is that
5 there's no dispute that the individual defendants, Peter and
6 Jack DeCoster, were generally aware of the environmental
7 positives as they were received. And they -- that goes back,
8 Your Honor, to the beginning of 2006.

9 THE COURT: To 2006.

10 MR. DEEGAN: And I can, you know, make my more general
11 argument later. But it was an awful long time coming for
12 Hofacre and Nolan to come to Iowa and actually start to address
13 something about the Salmonella contamination problem that they
14 knew they had.

15 So I think this goes a little bit to the due process
16 argument because I do think the Court can rely upon record
17 evidence that they did know about the contamination, and I point
18 to Dr. Davison's very extensive analysis of what happened and
19 what went wrong that created those risks that led to the
20 outbreak. There's an awful lot that the defendants as
21 responsible corporate officers failed to do.

22 Now, just to round out on the bribery, you know,
23 Mr. Green says we don't have evidence of personal knowledge.
24 Well, the evidence is -- the stipulation is evidence. We simply
25 in response to the Court's question wanted to say to Your Honor

1 when we stand up that we're not going to be able to say, Judge,
2 we want you to make a finding that on this specific time that
3 there was a knowledge of the bribe. And we think that would be
4 the case whether or not we had the five-day sentencing hearing
5 or the Court looks at just the stipulation. That's just where
6 we're at.

7 But we do believe that they should have known what was
8 going on. We think that there's aggravating circumstances in
9 that event and that vignette, and we do believe that the bribery
10 was designed specifically to thwart U.S.D.A. oversight over
11 quality of eggs. And Dr. Davison creates a link between checks
12 and Salmonella.

13 So, Your Honor, I don't want to get further off track,
14 but I did want to make those comments.

15 THE COURT: Well, we're already off track. That's my
16 doing. There is something I'm curious about. As I understand
17 it, paragraph 47 -- well, 45, 46, and 47 aren't objected to in
18 the individual defendant's presentence reports. It deals with
19 the bribe except with regard to the defendants' alleged lack of
20 knowledge. So here's one of my questions. I notice that
21 Anthony Murga was the one who actually carried out the bribe.

22 MR. DEEGAN: Yes, Your Honor.

23 THE COURT: Okay. When I was reading the personal
24 section of Peter DeCoster's presentence report, his ex-wife
25 happens to have the same last name.

1 MR. DEEGAN: Yes. It's not a coincidence, Your Honor.

2 THE COURT: Well, because there's nothing in the
3 sentencing record, you know, I couldn't really consider it other
4 than to note, well, this is interesting, which I did note that
5 it was interesting. Are they related?

6 MR. DEEGAN: I understand that at least at the time
7 Murga was the son -- excuse me, the brother-in-law of Peter
8 DeCoster. I had -- Mr. Dornan can connect me -- correct me if
9 I'm wrong. And I don't know that that's found in the record
10 either, Your Honor, and I agree it's a significant point that --

11 THE COURT: Well, it would have been interesting to
12 put in the offense conduct statement and the relevant conduct
13 statement.

14 MR. DEEGAN: Absolutely, Your Honor, and it seems in
15 retrospect absolutely we should have done so, and I apologize
16 for that.

17 THE COURT: But it's easy for me to be an armchair
18 quarterback and pick through this stuff when I'm not in the heat
19 of battle like the lawyers are. So it's not a criticism, but it
20 was something that, particularly when I thought I was going to
21 be deciding the credibility of the stip -- based on the
22 stipulation, it was something very important to me.

23 Mr. Dornan, can you shed any light on it?

24 MR. DORNAN: They were brother and sister, Judge.

25 THE COURT: Yeah. I kind of -- that was my guess, but

1 it was just a total guess. They could have been unrelated and
2 just shared the same last name.

3 See, facts that are important to me aren't necessarily
4 important to the parties because you don't have -- thank God you
5 don't have the ability to predict what I might look at. But --
6 so here's something that's super important to me that's not in
7 the sentencing record, and maybe there's nothing that can be
8 done about it. How long did Mr. Murga work after the
9 responsible corporate executives knew he had bribed an official?

10 MR. DEEGAN: Well, and, Your Honor, I'll try to point
11 to what there is in the record, but I'll agree that because we
12 don't have a specific date, time, event, even range that we can
13 point to the Court to about when it was discovered, it's
14 difficult to say. I would say this. We know there were two
15 bribes, and we know from Peter DeCoster's sentencing memo that
16 he says there was this conversation where the hypothetical bribe
17 came up. Now, he doesn't identify when that conversation
18 happened in relation to the two bribes.

19 But I believe it's in the record that it would have
20 been one time -- and we know this -- around April 12, 2010.
21 That's because we have a record of it coming out of petty cash.
22 And we believe that was the first bribe. But the other one
23 happened at some later time.

24 Our argument would be that setting aside the actual
25 knowledge and any particular time issue, the fact that it was

1 allowed to happen twice by a manager at Wright County Egg, at
2 Quality Egg, shows that the responsible corporate officers
3 weren't doing their job and allowed it to happen.

4 THE COURT: Anybody else want to comment on it?

5 MR. DORNAN: Your Honor, my understanding is that the
6 bribe was not learned by Mr. Peter DeCoster until after the
7 company had changed hands and was being run by the company that
8 it was sold to.

9 THE COURT: Well, yes.

10 MR. GREEN: May I --

11 THE COURT: Mr. Green, yes.

12 MR. GREEN: I'm not sure exactly where we are.

13 THE COURT: Neither am I. We're kind of wandering
14 here.

15 MR. GREEN: But there were -- there was misconduct and
16 regrettable conduct that happened at the Quality Egg facilities.
17 There are two individuals, Mr. Murga whose name has just been
18 raised and Mr. Wasmund, who were -- particularly Mr. Wasmund who
19 were principally responsible for these areas of operations and
20 who have made deals with the government. Mr. Wasmund I think
21 has pled guilty. I don't know all the specifics of what
22 happened to Mr. Wasmund, but I believe that he was charged with
23 the misconduct that he was responsible for. And Mr. Murga it's
24 my understanding traded his criminal exposure for immunity. But
25 these two gentlemen are at the core of what went wrong at

1 Quality Egg.

2 Now, Quality Egg is here before this Court because
3 under the law, as we all know, it is vicariously responsible for
4 the acts of misconduct committed by its employees. But that
5 does not mean that those who ran Quality Egg at the very top
6 level understood what their employees were doing. I mean,
7 this -- I mean, it's not unusual that employees below the top
8 tier of management engage in misconduct. And it is sometimes,
9 you know, a function of their exuberance or whatever it is, but
10 this misconduct was not counselled by either of the individual
11 defendants, wasn't certainly by Austin DeCoster aided and
12 abetted in any way whatsoever.

13 And there have been great strides made at Quality Egg.
14 I don't want this story to be left untold and particularly the
15 story about the Salmonella outbreak. I mean, there are -- you
16 know, there are very critical details here. This company was
17 not totally unaware of positive environmental tests prior to the
18 recall in August of 2010. But no egg company ceases operations
19 and no egg company engages in a nationwide recall when there's
20 environmental test results coming back positive.

21 And when there was an increasing incidence of
22 positives, they went out and hired -- this is all before the
23 outbreak, all before they understood, you know, that there was a
24 major problem here. They went out and hired two of the best
25 experts in the field to come in and advise them. That started

1 in 2009 in the year preceding the recall. And there was
2 significant egg testing in that year that came out negative.
3 And the experts are unanimous, the defense experts are
4 unanimous, that this was a very, very extraordinary, if not
5 unusual, occurrence when the vaccine that were administered to
6 the birds were not administered uniformly, that there were some
7 birds that failed to receive the vaccine.

8 THE COURT: Well, that's just a -- that's just a
9 theory that these folks concocted.

10 MR. GREEN: Pardon?

11 THE COURT: That's just a theory that your experts
12 concocted.

13 MR. GREEN: Why -- what leads the Court to say that,
14 sir?

15 THE COURT: Because I read their reports.

16 MR. GREEN: Well, I respectfully --

17 THE COURT: Of course, you disagree.

18 MR. GREEN: Well, the government's expert came in and
19 reviewed paper records and said that she just couldn't find
20 enough attention.

21 THE COURT: Look, you're -- whoever drafted -- you
22 know, I don't for a second believe the experts actually drafted
23 those declarations which is why I generally don't even allow
24 them to be filed in cases. I want live testimony. But you
25 stipulated that the experts were wrong in concluding that their

1 recommendations were followed.

2 MR. GREEN: Well, it was our -- I believe that the
3 experts would tell you that they believe that their
4 recommendations were followed.

5 THE COURT: Well, yeah. But then you turn around and
6 stipulate that that's not true. So why should I put my reliance
7 on experts who claim their recommendations were followed when
8 the very parties who hired them turn around and debunk that
9 claim by stipulating that there's no evidence that that's true?

10 MR. GREEN: I think what we were stipulating is that
11 there's no evidence showing that they, the experts, had specific
12 knowledge that every one of their recommendations was followed.

13 THE COURT: Well, there's no -- there's no evidence in
14 the sentencing record that that's true which is even more
15 important. But I'm just saying those are -- that's some of the
16 reasons why I think it was -- you don't like the word concocted.
17 I don't put -- I don't put any -- any credence in -- I don't
18 mean concocted that it came out of thin air. It's a theory.
19 That's all it is. It's a theory.

20 MR. GREEN: I don't think it's theoretical when I
21 represent to you that the experts were hired and that they made
22 recommendations and observed that their recommendations were
23 followed. They're not in a position -- we're not in a position
24 to contend --

25 THE COURT: No, I'm talking about their theory about

1 the Salmonella outbreak.

2 MR. GREEN: Well --

3 THE COURT: It's a theory.

4 MR. GREEN: I'm sure it is a theory, but I don't think
5 anybody understands precisely how Salmonella gets into the
6 ovaries of a chicken and the chicken thereby sheds the disease,
7 the infection, into the eggs. We -- I don't think the
8 government knows and we don't probably know exactly how it
9 happened.

10 THE COURT: I don't disagree with that.

11 MR. GREEN: So the experts have looked at all the
12 attendant facts and circumstances, and they believe that
13 their -- I mean, it is certainly undisputed that we began to
14 vaccinate birds, and that is a prudent, an extraordinarily
15 prudent, course of action. And we went from one vaccine -- one
16 vaccination to a second vaccination in an effort to eradicate or
17 reduce the possibility of this disease spreading. And the
18 experts -- on their recommendation we did that. And when the
19 experts went back then to try to analyze this, I mean, I think
20 they were acting in utmost good faith in trying to figure out
21 what happened. And they concluded that --

22 THE COURT: Was the government's expert acting in
23 utmost good faith?

24 MR. GREEN: I'm sorry, sir?

25 THE COURT: Was the government's expert acting in

1 utmost good faith?

2 MR. GREEN: I think the government's expert was acting
3 in good faith, but I --

4 THE COURT: But yours were in utmost good faith. Is
5 that the difference?

6 MR. GREEN: No. Then utmost -- I concede utmost.

7 THE COURT: Okay.

8 MR. GREEN: I'm not trying to quibble there.

9 THE COURT: Okay.

10 MR. GREEN: But the experts that the defense tendered
11 were the hands-on experts. They were there. They were the ones
12 wrestling with the problem. They were on site. They were
13 making the observations. I'm not trying to demean the
14 government's expert.

15 THE COURT: Well, go ahead if you want to.

16 MR. GREEN: No, I just -- that's not my style. I'm
17 sure she's an extraordinarily qualified woman.

18 THE COURT: She seems a lot more qualified than your
19 experts to me based on what I've read.

20 MR. GREEN: I don't -- I would disagree on that too.

21 THE COURT: But guess what. I get to decide that.
22 You don't.

23 MR. GREEN: You do, Your Honor.

24 THE COURT: And that's my finding of fact. The
25 government's expert is much more qualified on the things that

1 she opined on than your two experts were.

2 MR. GREEN: But she herself does not opine on exactly
3 how this --

4 THE COURT: I do understand that.

5 MR. GREEN: -- moved and so forth into this
6 population, poultry population.

7 THE COURT: But, you know, I'm not going to base any
8 sentencing decision based on the experts. I actually don't know
9 even why you submitted all those pages of reports. I read them
10 all, and I studied them. But it actually has no bearing on my
11 sentence.

12 MR. GREEN: I think we thought they would be helpful.
13 But if they're not, I understand that.

14 THE COURT: No, I could see why you submitted them.
15 But you think I'm really going to determine whether somebody
16 goes to prison or not which is the fighting issue in this case
17 based on what any of the three experts said?

18 MR. GREEN: No, sir, I do not. I really rose just
19 simply to make the observation about what happened on the watch
20 of my client and as well I presume on the watch of Mr. Peter
21 DeCoster. And I wanted the Court to be aware of the
22 circumstances surrounding what happened to the other two
23 gentlemen and their responsibility for that.

24 THE COURT: You know, I did think about writing a law
25 review article about Salmonella now, but -- I'm just kidding.

1 But it's not going to have any impact on my sentencing, so let's
2 not talk about the experts.

3 So let's back up here.

4 MR. GREEN: Yes, sir.

5 THE COURT: We started off on the constitutional
6 issue. A lot of this other stuff goes to something I want to
7 talk about later on, and that are what I consider to be
8 aggravating factors and mitigating factors. And even though
9 there are some aggravating factors that I see here about the way
10 Quality Egg was run, I don't know whether I can consider those
11 in -- under the 3553(a) rubric, so we'll have to get to that.
12 But why don't we wrap up the constitutional issue. Is there
13 anything else you wanted to add on the constitutional issue,
14 Mr. Deegan? I apologize. I'm the one that got folks off track.

15 MR. DEEGAN: No, Your Honor. The government will
16 stand on its brief on the constitutional issue.

17 THE COURT: And anything you want to add?

18 MR. DORNAN: I don't have anything to add, Judge, no.

19 THE COURT: Okay. Would -- anything else, Mr. Green,
20 that your team wants to add now that I've waived the tag team
21 rule? Anything else your team wants to add on the
22 constitutional issue?

23 MR. GREEN: I think we've made all of our arguments on
24 that, Your Honor. Thank you.

25 THE COURT: Okay. So let's get into the application

1 of 3553(a) factors on the two individual defendants. Before we
2 do that, I have one question with regard to the Quality Egg
3 sentencing, and that is your agreed-upon fine. And my question
4 is why should I accept that agreement, because by my math I have
5 the power to go up an additional \$500,000 and perhaps higher
6 depending upon Count 3 which I plead guilty to being a little
7 bit confused about? But setting aside Count 3, I clearly have
8 on Counts 1 and 2 the ability, if I want to, to go up an
9 additional half million dollars on the fine. At least that's
10 the way I understand it. And I've spent quite a bit of time on
11 that. But my question is should I even consider that, or should
12 I just be bound by what the parties agreed to, because I have no
13 idea how you agreed to it or why you agreed to it?

14 MR. DEEGAN: Your Honor, I'll take a shot at
15 responding to the Court's question. First of all, the fine,
16 both the guideline ranges as well as the specific fine is a
17 joint recommendation in the plea agreement. I know the Court
18 knows that.

19 THE COURT: Yeah.

20 MR. DEEGAN: But I don't want to say anything that
21 would in any way vary from what we've agreed to in the plea
22 agreement, and I'm not going to do that.

23 Your question I understand to be really more not a
24 should question but a authority question. And I don't disagree
25 that as calculated by the probation office there's extra room

1 there. We'd ask the Court to defer to the parties' joint
2 recommendation. It's several million dollars.

3 THE COURT: Yeah, tell me why. That wouldn't
4 violate -- I don't want you to violate your plea agreement
5 obviously, but certainly you can argue in support of why you
6 agreed to a specific number without violating your plea
7 agreement.

8 MR. DEEGAN: Yes, Your Honor.

9 THE COURT: Yeah.

10 MR. DEEGAN: And as a factual matter -- and I want to
11 make sure that I'm referring to the right spot -- if you look
12 at -- and this may not be responsive, and I apologize if it's
13 not. But there's a very extensive paragraph -- excuse me,
14 footnote 16.

15 THE COURT: Yes.

16 MR. DEEGAN: That's tagged to 60. And that's the
17 answer, Your Honor, of how we got to where we got. It was in,
18 I'll say, utmost good faith on the part of all the parties to
19 try to arrive at a number that was -- that accurately reflected
20 the loss for guideline purposes, and this is where we ended up.
21 And that's how we got to that guideline range of 4.8 million to
22 9.6 million dollars. And then from there it was a -- simply
23 a -- didn't seem like quite a bottom-of-the-range case or a top
24 range of the case, and this is what we were able to agree upon.
25 I don't know that there's any real magic to it other than that.

1 THE COURT: I'd like to ask you a question, but feel
2 free to tell me it violates your plea agreement if that's your
3 response.

4 MR. DEEGAN: Certainly, Your Honor.

5 THE COURT: Aren't there aggravating factors in this
6 case that would easily justify the additional half a million
7 dollars in a fine?

8 MR. DEEGAN: Again --

9 THE COURT: We're talking about the corporation now.

10 MR. DEEGAN: No. I understand exactly, Your Honor.
11 And I guess I'll just say that we do ask the Court to impose the
12 fine that's subject to the joint recommendation but that there
13 are a lot of factors and there are a lot of aggravating factors
14 in this case. And I leave it to the Court I guess then whether
15 or not those would justify something outside of the joint
16 recommendation of the parties.

17 THE COURT: Okay. Thank you.

18 Mr. Green, are you going to address this?

19 MR. GREEN: If you'll permit me to make a couple of
20 observations, Your Honor.

21 THE COURT: Yes.

22 MR. GREEN: The amount of the fine was a topic of
23 strenuous conversations. Government demanded a severe fine, and
24 I think the level of this fine is severe. And where we got into
25 most of our argument was over, you know, trying to actually

1 calculate what the loss was here.

2 THE COURT: Yeah, very hard to do.

3 MR. GREEN: And it became -- it became not only hard
4 but probably impossible. And it is my belief I feel -- I mean,
5 the government paid a lot of attention to this -- that they
6 brought to the table in the person of Mr. Deegan's arguments
7 that he was making to us all of the factors that bore on their
8 determination of that figure to include anything that would
9 qualify as aggravating because you can argue that there's a
10 probability -- hard for me to measure -- that the actual loss is
11 quite -- you know, quite small in comparison to this figure.

12 So through a lot of discussion and a lot of back and
13 forth we got to this number, and we ultimately agreed not only
14 with the number but to pay the fine, and that fine has been
15 paid.

16 THE COURT: Right.

17 MR. GREEN: In total.

18 THE COURT: A million one was paid last July, and the
19 rest of it was paid on Friday.

20 MR. GREEN: Yes.

21 THE COURT: And the clerk who handled it came in and
22 showed me a copy of the check for five million plus, and she
23 said, "Yesterday we got a check for 60 cents. Look at this
24 check."

25 MR. GREEN: Well, so it's been -- it's been paid in

1 full already. So I would urge the Court to accept this figure
2 as one that is the product of a great deal of discussion and
3 thoughtfulness on the part of not just us but agents and
4 accountants. Everybody had input into this number, and for that
5 reason I think it's a very appropriate number and would ask the
6 Court to accept it.

7 THE COURT: I appreciate that. Thank you, Mr. Green.

8 Okay. Let's move on to considering the -- you know,
9 in every sentencing of individuals I always spend the majority
10 of my time looking at what I consider to be the aggravating
11 factors and the mitigating factors that are in the sentencing
12 record. So I'd like to address those.

13 Why don't we start on an upbeat note and hear the
14 mitigating factors first. So, Mr. Dornan, do you want to --
15 you've been silent because it hasn't affected your client. Your
16 client has a number of mitigating factors that you've raised in
17 your memorandum.

18 MR. DORNAN: He does, Judge. Thank you very much.
19 I'd like to start out with lack of a criminal history except for
20 a retail theft at 21.

21 And in particular, Judge -- and you raised this
22 because you had an interest in what exactly happened a number of
23 years ago with respect to the immigration issue. It's been my
24 experience, Judge, that when a diversion agreement is entered
25 into in any jurisdiction that I've had of a client get

1 diversion, number one, there's an admission of responsibility
2 and accountability that's required. And number two, if they
3 don't do what they're supposed to do on pretrial diversion, it's
4 automatically a guilty plea, and that's the agreement. That's
5 remarkably absent in this particular agreement, Judge. This is
6 as a benign agreement as I can possibly -- that I have ever
7 seen.

8 And I think in part it goes to the fact that, number
9 one, Peter passed a lie detector test with respect to lack of
10 knowledge of any illegals.

11 And number two, that the primary purpose of that
12 agreement was to allow the government to have access to the
13 company to make sure that restorative measures were taken.

14 So I don't -- I don't think the Court can look upon
15 that as any indication that Mr. DeCoster committed any crime at
16 all.

17 THE COURT: I'm not.

18 MR. DORNAN: I appreciate that, Judge.

19 THE COURT: It's just like an arrest to me.

20 MR. DORNAN: That's right.

21 THE COURT: It was an arrest. There was no
22 conviction. I don't -- I think I've told you this many times.
23 In most presentence reports, I don't even look at the arrests
24 section because I'm not interested in arrests. And this is the
25 equivalent to kind of an arrest. Somebody thought he did

1 something wrong. They never -- government never pursued it.
2 They diverted it. So to me he's absolutely not guilty of that
3 offense, and I believe that to my core. So that's not a -- I'm
4 not going to consider that.

5 MR. DORNAN: Thank you, Judge. He is a mature man.
6 He is somebody who has a number of family responsibilities that
7 he is very studious about taking care of. He's 51. If you look
8 at most of the factors, Judge -- and I think I cited a 2004
9 sentencing commission study concerning the prospect of
10 recidivism -- Mr. DeCoster meets many of the factors that
11 mitigates him --

12 THE COURT: Well, the company's been sold; right?

13 MR. DORNAN: Company's been sold.

14 THE COURT: So does he work in the new company?

15 MR. DORNAN: Judge, what he --

16 THE COURT: See, there are so many different companies
17 and stuff, so there'd be no possibility of recidivism if he's
18 not working in the egg industry.

19 MR. DORNAN: He's not working in the egg industry,
20 Judge, correct. He's working -- basically he's doing work
21 involving the management of land and properties that are owned
22 by the family and their related entities. So you're right.
23 He's not working in the egg industry.

24 And in large part, Judge, one of the consequences of
25 this event is that they were no longer able to be credible in

1 the egg industry. So that's a consequence, Judge, and a loss of
2 a substantial amount of income to the company and a loss of a
3 substantial amount of material wealth concerning the recall of
4 the eggs that resulted from this incident.

5 Judge, he also has a exemplary record of being
6 involved in the community. There are a number of letters that
7 reflect that, reflect the fact that he has been extremely active
8 in the local community concerning charitable contributions and
9 not only in the local community but globally, Judge. And I
10 think when you talk about the history and characteristics of
11 Mr. DeCoster, they are ones that are reflective of tremendous
12 service to humanity.

13 The letter from Dr. Martin -- excuse me, Pastor Martin
14 is about as an impressive letter of charitable acts around the
15 globe that I've -- probably I've had any defendant ever exhibit.

16 And I want to bring up a point, Judge, that I hope the
17 Court thinks is a creative just punishment in this case because
18 it's something that is sorely lacking in the criminal justice
19 system and which Mr. DeCoster wants to do. And that is what do
20 you do with all the victims here? What's the best way for
21 Mr. DeCoster to address the harm that has resulted from the
22 sickening of a number of people?

23 Well, Mr. DeCoster wants to take the hard road with
24 respect to that. And he would like to sit down -- and, of
25 course, the victims have to be willing to do it because victim

1 offender mediation requires that -- sit down and look each one
2 of them in the eye and say, "I am sorry; I am sorry this
3 happened; I want to hear how it's impacted on your family; I
4 want to hear what I can do to restore you, restore the
5 community." It's something that is, I think, particularly
6 appropriate for this case.

7 I know that Mr. DeCoster is going to address that in
8 his allocution.

9 THE COURT: Yeah, but he could do that whether I send
10 him to prison or not. It's not an either/or.

11 MR. DORNAN: That's true.

12 THE COURT: You characterize it in your brief as, you
13 know, in lieu of sending him to prison he could do the
14 restorative ju -- I'm a big believer in restorative justice.
15 I've read a number of books about it. I know a number of people
16 involved in the restorative justice movement. And it's actually
17 something I was considering doing with my own life after I --
18 whenever I step down as a judge. But it's not an either/or
19 thing.

20 MR. DORNAN: I agree, Judge. But it would --
21 imprisonment would take away his -- and this would -- I guess,
22 Judge, this would significantly disrupt his life, and it would
23 significantly disrupt his life in a positive way with respect to
24 whatever conditions the Court imposes.

25 In addition, Judge, it would impact on his -- on the

1 charitable acts that he's been doing over the last number of
2 years. He began those acts, Judge, in part because of this
3 occurrence. He's doing what he can do on his own to provide
4 back to the community and back to people who are in need as much
5 as he can. And I think that's -- you know, that's not
6 something -- that's in anticipation of whatever the Court is
7 going to do here today, Judge. It's a -- it's something that's
8 in his fiber. It's in his being. And --

9 THE COURT: Why didn't he do it on his own before
10 sentencing today? I mean, if it was something he was so hopped
11 up about doing, why didn't he just go ahead and do it? And then
12 you could come in and say, look, he's done this restorative
13 justice; he ought to be rewarded for it.

14 MR. DORNAN: I can answer --

15 THE COURT: You know -- you know what it strikes me
16 as? I know you're not going to like this, but it's just like
17 the 2,000 drug defendants I have that say, you know, Judge, when
18 I get out of prison after I serve my mandatory minimum 20 years,
19 I really want to be a drug counselor. It really is no different
20 than that to the extent that they're sincere about it. I assume
21 your client's sincere about it. But it's really no different.
22 Go do -- but why didn't he do it before? Wouldn't it be more
23 impressive to me if he had done this on his own or with your
24 counsel and then you came in and you said, hey, here's how many
25 victims he met with?

1 MR. DORNAN: Well --

2 THE COURT: What were you waiting for?

3 MR. DORNAN: Well, it requires -- it requires a lot of
4 preparation. It requires a trained mediator. It requires --

5 THE COURT: Yeah, all of that could have been done in
6 a tenth of the time as this case has taken.

7 MR. DORNAN: Well, Judge, it could have, but it's a
8 process that is rather involved and requires that the victims --
9 and, you know, we're still receiving information as to who they
10 were, what the circumstances were up until this date. So it
11 would have been a little --

12 THE COURT: You could have talked to the lawyers that
13 filed the class action lawsuit. They could have told you that.

14 MR. DORNAN: Well --

15 THE COURT: I mean, you're -- no offense, Mr. Dornan.
16 You're just making excuses. It all -- let me ask you straight
17 up. This all could have been done before.

18 MR. DORNAN: Could have been done.

19 THE COURT: And it wasn't.

20 MR. DORNAN: Could have been.

21 THE COURT: And it wasn't.

22 MR. DORNAN: Correct.

23 THE COURT: Okay. So I appreciate he says he wants to
24 do it. So what?

25 MR. DORNAN: Well, Judge, I think when you take a look

1 at all of the mitigating factors here and the fact that
2 Mr. DeCoster is somebody who is very conscious of the harm
3 that's been caused, Judge, if you note that when there was a
4 outbreak in Minnesota in 2009 that as soon as Mr. DeCoster found
5 out about it and there was a -- and then it was suspected that
6 the Quality Egg may have been responsible for some of the eggs,
7 he immediately took action with respect to having the eggs
8 tested. And the eggs tested negative.

9 Judge, I think that goes to his state of mind with
10 respect to responding to an outbreak and doing what he could do
11 to get to the nub of the matter. If he didn't care about this,
12 Judge, then obviously he wouldn't have responded in the way he
13 did. And I think that goes to his character and to the history
14 and characteristics of him.

15 So I think that all of those factors, Judge, when the
16 Court is considering imposing a sentence mitigate toward the
17 imposition of a probationary one. And I think that the added
18 requirements that the Court could impose would be far more
19 proactive with respect to the victims involved here and would
20 allow this Court to send a very clear message that somebody's
21 going to have additional skin in the game other than doing a
22 period of incarceration.

23 So all of the factors here, Judge, with respect to his
24 history and characteristics are in favor of the Court
25 withholding punishment and imposing a term of probation.

1 THE COURT: I'm confused, Mr. Dornan. Are you saying
2 that as a condition of probation I have the authority to order
3 your client to do the restorative justice aspects that you've
4 suggested in the brief?

5 MR. DORNAN: Well, it's a -- it's a condition that I
6 think was -- yes, I do. I think it's within your authority, and
7 he wants to do it.

8 THE COURT: Do you have any case law that says I have
9 the authority to order it?

10 MR. DORNAN: Well, I think you have wide -- you have
11 wide latitude, Judge, in imposing probationary conditions. I
12 don't think that imposing that sort of thing if both parties --
13 if the victims are willing to do it and Mr. DeCoster's willing
14 to do it, I don't see that as anything that you're prohibited
15 from doing.

16 THE COURT: Well, I doubt very much that I have that
17 authority but . . .

18 Could I order him to go to a monastery for three
19 months as a condition of probation and not speak to anyone and
20 just meditate about what Quality Egg did?

21 MR. DORNAN: No, I don't think so.

22 THE COURT: Okay. Why is this any -- why is ordering
23 him into a restorative justice program or creating one, why is
24 it any different than ordering him to go to a monastery and
25 meditate about it? I mean, I understand the result may be

1 better. It could actually help people. But why is it any
2 different in terms of my authority?

3 MR. DORNAN: Well, it's different, Judge, in that he
4 is willing and able to do that, wants to do that.

5 THE COURT: That has nothing to do with my authority.
6 Does it? Does his willing and able have something -- somehow
7 he's willing and able to join the Church of the Latter Day
8 Saints, I can order that? I don't think so.

9 MR. DORNAN: I would agree with that, Judge.

10 THE COURT: Yeah. So being willing and able really
11 has nothing to do with authority; right?

12 MR. DORNAN: Yes.

13 THE COURT: So how is my hypothetical different other
14 than he's willing and able which we've agreed now doesn't affect
15 my authority to order it?

16 MR. DORNAN: I would agree with that, Judge.

17 THE COURT: So do you agree that I don't have
18 authority to order it or that I do have authority?

19 MR. DORNAN: Well, I would suggest that under these
20 circumstances with a willing defendant who's willing to do that
21 that you could.

22 THE COURT: Well, I think what that means is if I
23 ordered it he would do it because he's willing and able.

24 MR. DORNAN: Correct.

25 THE COURT: But I don't want to order something I

1 don't have the authority to do.

2 MR. DORNAN: I understand your position, Judge.

3 THE COURT: Now, we haven't taken up this one little
4 piece of the stipulation in the e-mail that's left, and that
5 regards your client. So why don't we do that now. And then
6 we'll turn to the aggravating factors because it's potentially
7 an aggravating factor, but I have to decide it first. And that
8 is this issue about whether your client had -- made or had
9 knowledge of misrepresentations at the Wal-Mart meeting.

10 MR. DORNAN: Correct. Judge, the exhibits would
11 reflect that there was a presentation that was mailed to
12 Wal-Mart, would have been six days before the actual
13 presentation that involved -- I believe it's Government Exhibit
14 4 that showed that there was -- there was not any material
15 concerning flock testing and no false statements with respect to
16 that.

17 The testimony or the lack of testimony that you have
18 here today I think would go back to the point that this Court
19 was making earlier as far as how do you decide what you're going
20 to consider and what you're not going to consider. Judge, the
21 case law states that as far as any objection to the presentence
22 report that the Court can either or must either make a finding
23 as to whether a disputed fact exists or state that it will not
24 take into -- will not take the disputed fact into account if the
25 Court chooses to make a finding with respect to disputed facts.

1 I don't think that the Court has enough evidence to
2 make a finding based on the record before it that Mr. DeCoster
3 did anything inappropriate with respect to making false
4 statements at the Wal-Mart meeting.

5 You have -- and I've been in front of this Court many
6 times, and I know that this Court really wants live testimony.
7 But you don't have to. You have conflicting testimony here,
8 Judge. You have Mr. Crawford's statement that this clean
9 presentation was mailed in advance of the meeting. It makes no
10 sense at all that the government is arguing -- or the
11 government's arguing that that would get lost and we wouldn't
12 have that. I mean, that's -- that's not a strong argument.

13 And you have Mr. Crawford himself who, while his
14 memory is not completely clear, his notes would be reflective of
15 the fact that with respect to SQF testimony that that had to do
16 with a future occurrence in September of '09 and had nothing to
17 do with Mr. DeCoster making a statement concerning SQF
18 certification.

19 So I think that this is a wash, Judge, with respect to
20 the evidence that was presented to you by both Mr. DeCoster and
21 the government.

22 THE COURT: Well, what's the significance of the name
23 tag as I understand it on the exhibit with the inaccurate
24 representations in that exhibit? I realize that's a different
25 exhibit than what Mr. Crawford mailed.

1 MR. DORNAN: You know, there were --

2 THE COURT: But how do you explain that name tag?

3 MR. DORNAN: Well, there were a number of different
4 proposals that had been made. And where they ended up in a file
5 and whether or not that was proposals -- that was one proposal
6 that had previously been done but was not the proposal that
7 Mr. DeCoster gave, it doesn't mean that in the subpoena and
8 where that presentation was ultimately stored that that name tag
9 didn't get thrown in with more than one proposal.

10 THE COURT: So the name tag gets thrown into a file
11 and affixes itself to the proposal that is contrary to your
12 client's best interest. That doesn't make any sense.

13 MR. DORNAN: Well, I don't --

14 THE COURT: Seriously? Let me try this. Isn't the
15 most logical explanation is that Mr. Crawford mails one with no
16 incorrect statements in it? Mr. Crawford mails that to
17 Wal-Mart. I'm assuming Wal-Mart receives it. Isn't the most
18 logical explanation of how Mr. Peter DeCoster's name tag gets on
19 the version that's inaccurate is that that's the version he had
20 with him at the meeting and when he left the meeting he put his
21 name tag on it?

22 MR. DORNAN: Well, it's possible, Judge. That is an
23 explanation.

24 THE COURT: Well, you tell me a better explanation. I
25 like mine better. I'm just throwing it out there. I haven't

1 made a finding of fact. But I like mine better than your
2 suggestion that a name tag was thrown in some file and then it
3 auto -- it kind of affixes itself to the incriminating document.
4 That's fanciful.

5 MR. DORNAN: Well, we're --

6 THE COURT: I mean, I have a good sense of reasonable
7 doubt and all, but that's -- in this sentencing all my findings
8 of fact have to be by a preponderance. But that pushes fanciful
9 to me. I'm kind of surprised that was your best shot at it.

10 MR. DORNAN: Well, I would say, Judge, that the better
11 explanation is that there would have been no reason for the
12 final or the report that was sent six days before -- and there
13 is evidence that Wal-Mart did receive it; we have that
14 receipt -- that in preparation of giving that presentation there
15 would be no reason why Mr. DeCoster would not have used that
16 report.

17 THE COURT: Because it makes it a stronger
18 presentation to use the report he had --

19 MR. DORNAN: Well --

20 THE COURT: -- if they're trying to get the business.

21 MR. DORNAN: Well, I think the background of that
22 meeting, Judge, was that it was primarily going to be concerned
23 with pricing. But why would you go through the trouble of six
24 days before providing a presentation and having Wal-Mart have it
25 and giving it to them as what you are representing your company

1 is doing and then not follow through with it at the
2 presentation?

3 THE COURT: Because in the interim he came up with
4 some better ideas with what might impress Wal-Mart. People
5 change presentations all the time. I've done almost 400 CLE
6 programs where I've sent -- the vast majority of them I've sent
7 a PowerPoint ahead of time. Never once have I used the
8 PowerPoint I've sent because I've always made changes to it in
9 the interim, sometimes the morning of.

10 So it doesn't strike me as odd that you send a
11 presentation to Wal-Mart and then you make changes in it to try
12 and enhance the persuasiveness of the presentation. I mean,
13 doesn't that jive with kind of common experience? I don't know
14 that that's what happened here, but wouldn't that be a more
15 reasonable explanation?

16 MR. DORNAN: Well, possibly. But another reasonable
17 explanation, Judge, is that was a -- that was a presentation
18 that eventually was subpoenaed or found was a previous
19 presentation that had been altered six days before by the one
20 that was actually physically sent to Wal-Mart as the hard core
21 copy. You could look at that both ways, Judge. You could look
22 at it as the way that you just expressed. Or you could look at
23 it and that was an old presentation, one that had not been
24 refined but was refined six days before.

25 THE COURT: Well, more than six days before, right,

1 because when you say refined --

2 MR. DORNAN: More than six days before it was sent,
3 yeah, because the presentation --

4 THE COURT: In other words, the inaccurate
5 presentation with the false representations was first.

6 MR. DORNAN: Correct.

7 THE COURT: And then when someone realized there were
8 false representations in it, they took it out, and then
9 Mr. Crawford sent the one with no --

10 MR. DORNAN: Correct.

11 THE COURT: Yeah, I think that's a great explanation,
12 and it's one I would very much like to believe in. The problem
13 is there's no real explanation then about how the name tag gets
14 affixed to it, and that's why I find it implausible or less
15 plausible. It's not implausible. It's less plausible than
16 there was a person at the meeting with the false report that
17 affixed Peter DeCoster's name tag to it. And because I assume
18 there's no evidence that somebody else was wearing
19 Mr. DeCoster's name tag, he was the person that took his name
20 tag off and affixed it to the presentation so you would remember
21 that's the presentation I gave because it has the name tag on
22 it, something I've also done on many occasions too.

23 MR. DORNAN: Well --

24 THE COURT: Isn't that the most plausible explanation?

25 MR. DORNAN: If in the period of time, Judge, between

1 the making of the presentation, putting this presentation in a
2 file, and other people in the company having access to that or
3 taking the name tag and putting it in there -- there were other
4 people from --

5 THE COURT: And maybe Mr. Murga did it.

6 MR. DORNAN: Well, I don't think Mr. Murga was at the
7 presentation.

8 THE COURT: No, no, he's the one that went in the file
9 and put the name tag on it to frame his brother-in-law.

10 MR. DORNAN: Well, I'm not --

11 THE COURT: Or his ex-brother-in-law.

12 MR. DORNAN: Well, I'm -- all I'm saying, Judge, is
13 that the time frame between the making of this presentation and
14 the fact that it was subpoenaed by the government, I guess if
15 you look at it that way -- and Mr. DeCoster knew that that was
16 attached to it, that he had ample opportunity to take it off.
17 You know, I guess if you're looking at bad intent, I guess he
18 would have had ample opportunity to take it off.

19 THE COURT: How many times in the last 20 years have
20 you worn a name tag?

21 MR. DORNAN: You know, when I was running for county
22 attorney, I wore it quite a bit.

23 THE COURT: But you go to conferences.

24 MR. DORNAN: Yes.

25 THE COURT: You have -- or I guess Nebraska doesn't

1 have required CLE, does it?

2 MR. DORNAN: It does.

3 THE COURT: Oh, it does now?

4 MR. DORNAN: Yes.

5 THE COURT: Yeah, I think they were one of the
6 holdovers. So when you go to a CLE program, you get a name tag;
7 right?

8 MR. DORNAN: Yes.

9 THE COURT: You ever go back to your office and put
10 that name tag in a file?

11 MR. DORNAN: Sometimes I'll put it -- sometimes it
12 will go in whatever file I took with me.

13 THE COURT: Right.

14 MR. DORNAN: Sometimes.

15 THE COURT: Right. But you never go back to the
16 office and put it in some kind of file. You never go to a CLE
17 program in Lincoln and drive back to Omaha and then go into your
18 office and take the name tag off and put it into some kind of a
19 file, do you?

20 MR. DORNAN: Probably not, no.

21 THE COURT: Probably not, right. But isn't that what
22 you're suggesting is the most probable thing that happened here?
23 They fly back from the meeting with Wal-Mart folks in Arkansas,
24 and somehow this name tag gets put in a file in the Northern
25 District of Iowa? That just doesn't seem to jive with your

1 common experience and mine.

2 MR. DORNAN: Sometimes, Judge, things that appear to
3 be what they are are not.

4 THE COURT: Okay. So let's assume that I'm right and
5 I'm going to make the following finding of fact. Mr. Peter
6 DeCoster put that name tag on the printout of the presentation
7 that contained false information. Let's assume I make that
8 finding of fact.

9 MR. DORNAN: I don't think it's relevant.

10 THE COURT: It's not relevant to this contested issue?

11 MR. DORNAN: I don't think it's relevant with respect
12 to -- I think it's relevant to the contested issue, yes.

13 THE COURT: Okay.

14 MR. DORNAN: I don't think it's relevant with respect
15 to your sentencing.

16 THE COURT: Okay. But before we get there, let's
17 assume I'm right and you're wrong and you kind of see that's
18 probably how it's going to go; right? Are you seeing that?

19 MR. DORNAN: Yes.

20 THE COURT: Okay. That doesn't establish that he made
21 any false representations in the presentation, does it?

22 MR. DORNAN: No.

23 THE COURT: So why don't you argue that?

24 MR. DORNAN: Well, I have in part, Judge. I have in
25 part because there is a -- grand jury testimony and a letter

1 from Mr. Crawford which states that he doesn't have any
2 recollection of any statements related to flock testing or the
3 SQF other than the 2009 one.

4 THE COURT: And nobody at that meeting did either.
5 The government didn't produce any evidence that anybody at that
6 meeting claimed that there were false representations made. Did
7 the government produce that evidence?

8 MR. DORNAN: Not here today, no, Judge.

9 THE COURT: Anything else you'd like to argue?

10 MR. DORNAN: No, Judge.

11 THE COURT: Mr. Deegan?

12 MR. DEEGAN: Thank you, Your Honor. On the Wal-Mart
13 presentation issue --

14 THE COURT: Yes.

15 MR. DEEGAN: -- just getting to the Court's last
16 point, it is part of the stipulation -- and I believe that
17 there's portions in the presentence report too -- that two other
18 participants in the meeting would testify that those topics were
19 discussed. The flock testing, the SQF --

20 THE COURT: And which paragraph is that now?

21 MR. DEEGAN: I'm looking at Government's Exhibit 1,
22 the stipulation, if the Court will indulge me for a moment.

23 THE COURT: Five?

24 MR. DEEGAN: Yes, Your Honor. I believe that's
25 correct. I believe it's 6, Your Honor.

1 THE COURT: So not only do you have the Wal-Mart
2 employee testifying to that, but you also have Alison Marshall
3 who worked at Quality Egg testifying that those subjects were
4 discussed.

5 MR. DEEGAN: Yes, Your Honor, that's correct.

6 THE COURT: Well, I thought you told me there wasn't
7 any evidence of those.

8 MR. DORNAN: Well, at today's hearing, Judge, with
9 respect to live testimony but not with respect --

10 THE COURT: Oh. So when you meant today's hearing --
11 I didn't understand what you meant by that, but now I do. So
12 there's testimony in a stipulation that you agreed to that I
13 should disregard even though the parties agreed to it, and I
14 should disregard it because I have a preference for live
15 testimony.

16 MR. DORNAN: I would -- I would say --

17 THE COURT: Seriously?

18 MR. DORNAN: Well, Judge, I would say that with
19 respect to this particular issue, this is what they would
20 testify to if called. But with respect to our evidence and what
21 Mr. Crawford would testify to if called would be that he didn't
22 remember the flock testing policy, the SQF program being
23 discussed.

24 THE COURT: Well, that's not inconsistent with
25 paragraph 6. It's just that Mr. Crawford -- he's a busy guy.

1 He's got his finger in a lot of important things. This happened
2 quite a while ago. He doesn't remember it. But a witness who
3 was there does remember it. So why would that witness have a
4 motive to fabricate?

5 MR. DORNAN: I don't know the -- I don't know the
6 circumstances, Judge, with respect to the government's contact
7 of that witness and the discussions related to this.

8 THE COURT: And what would Alison Marshall's motive be
9 to testify that the version of the presentation presented at the
10 meeting contained the inaccurate statements about Quality Egg's
11 flock testing policy and its SQF program?

12 MR. DORNAN: I don't know the answer to that, Judge.

13 THE COURT: Disgruntled ex-employee?

14 MR. DORNAN: I don't know.

15 MR. GREEN: May Mr. DeCoster be excused for a moment?

16 THE COURT: Yes. Matter of fact, we've kind of pushed
17 the limits here. Why don't we take a recess until 11:30. Thank
18 you.

19 (Recess at 11:05 a.m.)

20 THE COURT: Thank you. Please be seated.

21 Mr. Deegan?

22 MR. DEEGAN: Thank you, Your Honor. I'd like to
23 respond to just a few things with regard to Wal-Mart, first of
24 all.

25 In addition to the portions of the stipulation that we

1 pointed out, we'd also point out that also paragraph 6, the
2 parties stipulate Jerry Crawford who was present at the meeting
3 would testify that while he does not specifically recall what
4 was discussed that he believes that those two items weren't
5 discussed.

6 Then we pointed out in our brief, of course, that his
7 notes talk about SQF, and then we have now grand jury testimony
8 where what he says is I assume that that's what that means. But
9 I think the state of the record is that if Mr. Crawford had
10 testified that bottom line is he doesn't have a specific
11 recollection of what was discussed at the meeting while the
12 other two folks that we mentioned in the stipulation do recall
13 what happened, and they say that those items were discussed.

14 The other thing I'd like to point out is if you look
15 at -- first of all, I'd invite the Court to take a look at
16 actually the original exhibit which was just on the Court's
17 bench, Exhibit Number 3. That's -- we had marked for the Court
18 the actual one that we got from the company only to make the
19 point that it is bound. It's got a nice plastic cover on it.
20 It's multi-color. And there's a couple things I want to point
21 out that weren't in our brief.

22 First of all, if the Court looks at the table of
23 contents which is, I guess, on page 4, it's numbered 1 through
24 15. Of course, the flock testing policy is at tab 10. Then the
25 Court can easily go to tab 10 and see the flock testing policy

1 that we're talking about, and the other items are in there as
2 well. If the Court looks at the Crawford version at the table
3 of contents, you'll notice that it starts at 4, goes to 6, and
4 then it's kind of a mish mash of numbers going all the way
5 through. That's Exhibit 4, and I'm referring to page 3.

6 The government submits that that is indication that
7 this is really a draft. You'll see from the stipulation that
8 only one version was produced from Mr. Crawford and it was from
9 his digital records. So that I think indicates that this can't
10 be the one that was discussed at the meeting.

11 The other thing I'd like to point out for the Court is
12 if you flip the page on the Crawford version and now you're at
13 page 4, at the very top there's a confidentiality agreement, and
14 it says Fareway Stores and Wright County Egg hereby agree as
15 follows. And then the correct Quality Egg -- or excuse me,
16 Wal-Mart is at the signature line.

17 But this, I believe, is a draft because if you look at
18 Government's 3 which we believe was the one that was actually
19 discussed, that error has been corrected.

20 All of those I believe, Your Honor, are indicate --
21 Your Honor, the government doesn't get an exhibit really as
22 compelling as this very often, and if you'll flip to the back
23 cover you can see that that is -- that name sticker is stuck to
24 the back cover, and the government feels like there's ample
25 evidence to find by a preponderance that that was the one that

1 was presented at the meeting in Arkansas.

2 THE COURT: Thank you, Mr. Deegan.

3 Would you like to respond to the government's
4 argument, Mr. Dornan?

5 MR. DORNAN: Judge, just to say that the -- we
6 disagree with the fact that flock testing was discussed. In
7 Exhibit Number 4, Judge, there is no reference to flock testing
8 being discussed and that the better evidence would be
9 Mr. Crawford's notes with respect to what did or didn't happen
10 at the meeting. The government hasn't presented any evidence of
11 any notes from the Wal-Mart representatives with respect to what
12 happened at that meeting, and that is --

13 THE COURT: Well, you know, I think I asked you this,
14 but what motive would Wal-Mart have to -- for that Wal-Mart
15 person to fabricate her testimony?

16 MR. DORNAN: Well, the -- Alison Marshall?

17 THE COURT: No. She's the Quality Egg person. The
18 Wal-Mart person.

19 MR. DORNAN: Well, I can't speak to --

20 THE COURT: It's, you know, paragraph 6. The parties
21 stipulate that the Wal-Mart employee present at the meeting
22 would testify.

23 MR. DORNAN: I can't speak to what transpired between
24 the government and the Wal-Mart witness, purported witness,
25 Judge, between the time that this presentation was made until

1 this action was brought against Mr. DeCoster. But I again would
2 urge the Court to consider the fact that you have conflicting
3 testimony here. You don't have live testimony that's been
4 presented. And I would ask the Court to not consider this fact
5 that's in dispute as evidence.

6 THE COURT: Well, but you didn't have to sign the
7 stipulation. You could have put the government to their burden
8 of proof, or even having signed the stipulation you could have
9 subpoenaed that Wal-Mart witness and put her on. I would have
10 given you permission to lead her because she's adverse, and you
11 could have cross-examined her.

12 MR. DORNAN: I could have, Judge, but it's not my
13 burden.

14 THE COURT: Well, I think the government's more than
15 carried its burden based on paragraphs 5 and 6, particularly
16 that they have -- that two -- one Wal-Mart employee and one
17 employee of Quality Egg were willing to testify that Peter
18 DeCoster discussed the Quality Egg's flock testing policy, its
19 HACCP and SQF programs, and that that discussion contained
20 inaccurate statements about flock testing policies and SQF.

21 And, you know, the government has a very plausible
22 and, I find, believable explanation between Exhibits 3 and 4,
23 and that is that the one that Mr. Crawford had was a draft which
24 kind of makes sense he'd send a draft to the lawyer to review
25 and that -- but the real -- I mean, I just think it's -- a very

1 strong piece of evidence is the name tag, and there's just no
2 logical explanation for how it gets in this -- how it gets
3 attached to Government's Exhibit 3. There's just no logical
4 explanation for it other than Mr. DeCoster attached it and that
5 that was the one with the -- and then pointing out the Fair View
6 or Fareway and Wal-Mart. Clearly was a draft. Table of
7 contents had a gap in it. So that's not a difficult finding to
8 make. I mean, I think the evidence is very strong that
9 Mr. DeCoster made false statements to Wal-Mart at that meeting.

10 Yes.

11 MR. DEEGAN: And, Your Honor, if this is an
12 appropriate time, I'd like to speak briefly to the restorative
13 justice proposal and again understanding we're not advocating
14 for one particular type of sentence. But Peter DeCoster has
15 asked that the Court consider that. Of course, under the
16 3553(a) factors, one factor the Court's to consider is the types
17 of sentences available. And I don't know of authority for
18 ordering this type of --

19 THE COURT: Well, I think I can consider that he wants
20 to do it.

21 MR. DEEGAN: I believe -- and I think that's the
22 point.

23 THE COURT: Sure. That's under history and
24 characteristics of the defendant. You'd interpret broadly,
25 which I do, the fact that he wants to engage in restorative

1 justice project concerning the victims in this case as both -- I
2 mean, it's admirable. But I just don't think I have the power
3 to order it.

4 MR. DEEGAN: And, Your Honor, the fact that the Court
5 was willing to take him at his word when he says this is
6 something he wants to do really means a couple things. Number
7 one, that as long as the victims who, by the way, have a right
8 not to participate if they don't want to, but if they want to
9 meet with him and he's genuine in his approach to meet with
10 them, then it will happen. There are a couple lawyers that
11 represented the vast majority of folks that were identified, and
12 he can contact them. So it will happen.

13 The other component of the proposal is restitution
14 which the Court can order without this sort of extraordinary
15 probationary condition.

16 THE COURT: And the parties have stipulated to
17 restitution.

18 MR. DEEGAN: That's correct. So again, all of this
19 can happen. I think, though, that, again, on the topic of the
20 types of sentences available, when Mr. Peter DeCoster says this
21 is something I really want to do, well, it's at the end of the
22 day not all entirely his choice, and you have to consider, of
23 course, the need for adequate deterrence and what is that --
24 what message is that going to send again to the next company
25 who's looking perhaps at this case and looking at the

1 consequences of what can happen.

2 If it's as simple as, well, he decided that his -- he
3 would like to sit down and talk to the victims -- and, again,
4 that's laudable for him wanting to do that, but I don't know
5 that it has -- I think the Court needs to weigh whether or not
6 that provides an adequate deterrent effect or not.

7 THE COURT: Well, it certainly has nothing to do with
8 general deterrence.

9 MR. DEEGAN: I think that's correct, Your Honor.

10 THE COURT: And I don't think I'm going to make a
11 finding that Peter DeCoster needs specific deterrence. So I
12 think it's kind of unrelated to deterrence.

13 But does the government have a view about my point?
14 You know, in the analogy to the drug defendants, they're all
15 incarcerated, so they can't go out and become a drug counselor,
16 you know, prior to their sentencing, and those move on a much
17 faster track than this case did. He's had well over a year.
18 When was -- when were they originally notified of the
19 information?

20 MR. DEEGAN: Your Honor, I don't have a specific date,
21 but we would have been in discussions with the company for a
22 very long time. It's been well over a year. It's closer to
23 three.

24 THE COURT: Closer to three years. So my point is
25 Mr. Peter DeCoster had ample time to engage in any restorative

1 justice he wanted to.

2 MR. DEEGAN: Yes, Your Honor.

3 THE COURT: And doing something is a lot more
4 persuasive than saying somebody's going to do it, to me.

5 MR. DEEGAN: Yes, Your Honor.

6 THE COURT: Any response you'd like to make on that
7 one?

8 MR. DORNAN: No, Your Honor.

9 THE COURT: Okay. You want to talk about aggravating
10 factors for Mr. Peter DeCoster?

11 MR. DEEGAN: Yes, Your Honor. And I don't -- we filed
12 a sentencing memo where we address what we believe for the
13 individual defendants are the key aggravating factors. And I
14 don't want to repeat what's in there but just to summarize a
15 number of things having directly to do with food safety at
16 Quality Egg that either weren't done or they played lip service
17 to like the independent AIB audits, like a HACCP plan, things
18 that were required from a large customer of theirs and, you
19 know, rather than having those in place, the company fabricates
20 documents at audit time, changes practice at audit time. And
21 these aren't really -- they aren't very real food safety
22 programs. And I think that's something that as the chief
23 operating officer on the ground, Peter DeCoster needs to be
24 responsible for.

25 They do relate to Salmonella and the outbreak that

1 occurred. I think if the Court reads Dr. Davison's report,
2 there is a link between a lot of these items, things like check
3 detectors, et cetera, excess checks that increase the risk that
4 there's going to be a Salmonella outbreak.

5 And, of course, to the government the key fact here is
6 that the company, while it wasn't legally required to, was doing
7 Salmonella testing and was getting positive results that
8 increased as you approached the time of the egg rule in 2010.

9 That actually raises another, I think, significant
10 point about timing. There is evidence in the record regarding
11 them hiring two experts, one for rodent control and one for
12 other issues including addressing Salmonella in Iowa, but
13 neither of those individuals were hired to come into Iowa and
14 address the problem of the -- of too many environmental
15 positives or a contamination in Iowa until early 2010.

16 Why is that important? Because it was July 9 of 2010
17 that the egg rule was coming into effect. That was when they
18 were going to be legally required to do environmental testing.
19 And if they had positives, they were going to have to suddenly
20 test some eggs. And if those came back positive, then they're
21 going to have to divert.

22 That's -- so what was happening is Quality Egg's about
23 to get hit in the pocketbook with their contamination problem.
24 Up until that point, they didn't test an egg.

25 Now, there is -- in the stipulation we talk about the

1 fact that there was this one incident in 2009 when Peter
2 DeCoster was notified by the FDA that there was a possible
3 outbreak -- there was an outbreak at a facility that got eggs
4 from Wright County and turns out it was not them, but Peter
5 DeCoster tested some eggs in response to that call. That was
6 not in response to environmental positives. And I'd submit to
7 the Court that on this record they didn't do anything in
8 response to environmental positives until 2010 when the egg
9 rule's coming online and suddenly they're going to have to be
10 legally responsible for doing something.

11 There's some discussion about dry cleaning of barns.
12 But if the Court reads the record very carefully, they dry
13 cleaned all their barns. That's just what you do between
14 flocks. They didn't change that because they had an
15 environmentally positive barn. Significantly, they'd never
16 tested or retested to make sure that a barn was coming back SE
17 negative before putting a new flock in. That just didn't
18 happen.

19 They never diverted eggs, and until the egg rule went
20 into effect on July 9, 2010, they never tested an egg for
21 Salmonella, not one time, because of an environmental
22 contamination problem at Wright County Egg.

23 So there's just far too little that was done to try to
24 prevent the possibility of an outbreak, and by the time they
25 were doing -- taking certain steps and having somebody come in

1 to actually address the problem in Iowa, the outbreak was
2 already underway.

3 And, Your Honor, be happy to try to address other
4 areas in the record, but those are the basic aggravating facts
5 that the government sees when it comes to the individual
6 defendants and Mr. DeCoster, Peter DeCoster, in particular.

7 THE COURT: Mr. Dornan, anything else you'd like to
8 add?

9 MR. DORNAN: Just to reference, again, the April of
10 2009 action by Mr. DeCoster concerning when the FDA contacted
11 him concerning the outbreak, he took immediate action to address
12 it.

13 THE COURT: Okay. Why don't we move to Austin Jack
14 DeCoster, and you can talk about the mitigating factors.

15 MR. GREEN: Your Honor, please, just listening to
16 Mr. Deegan for the last couple of minutes, I must say I'm a
17 little bit confused. His argument seems to be that before a law
18 is passed and before there are obligations to do things you're
19 under an obligation to do things. And then when the law is
20 passed and you're under an obligation to do something and then
21 you do it, all of that, you know, amounts to an aggravating
22 circumstance. That makes absolutely no sense to me.

23 Now, one thing is indisputable, and I wish -- I'm not
24 in a position to, you know, make this representation to you.
25 But I'm going to say it anyway, and that is that all egg

1 producers in the United States of America and elsewhere
2 experience positive results from environmental testing. There
3 is no rule, there is no obligation that when you get positive
4 tests from -- positive results from environmental testing that
5 you have to recall eggs, shut down your plant, or do anything
6 else. It's a matter of judgment. And it remains a matter of
7 judgment. And the egg rule changed a few things, and this
8 company abided by the egg rule. There's no allegation that it
9 violated the egg rule.

10 Now, before the recall, before the recall, there were
11 environmental test positives. Tests came back positive. The
12 company did not sit on its behind and do nothing; okay? It did
13 react. It fumigated. It cleaned out barns. It implemented
14 rodent control measures. It did a variety of things. And I
15 think they're set forth in our sentencing memorandum.

16 The point is that despite those practices, okay, there
17 was an outbreak of unprecedented proportion, clearly unusual and
18 unanticipated, which occurred at the facilities in Iowa.

19 Counsel for the government says, well, they did some
20 egg testing, and, okay, the egg testing came out negative. You
21 can't do a better test than test eggs and have them come out
22 negative. But he says -- but he says, well, that really wasn't
23 in relation to a particular positive environmental test. What's
24 the difference? It all goes into the mental calculus of what's
25 happening on your property and what measures you need to take

1 and what's reasonable under the circumstances.

2 What really happened here is is that as the incidences
3 increased of positive test results and environmental test
4 results now, the company did ramp up its activity. And then the
5 outbreak occurred.

6 And what this company did is it voluntarily
7 recalled -- they didn't wait for administrative orders. They
8 didn't wait for the skies to open up and thunder and lightning
9 to happen. They voluntarily recalled millions and millions of
10 eggs. They took them off the market, first in one massive
11 recall, then in a second recall.

12 As a result of that, they lost millions and millions
13 of dollars of revenue. They lost countless numbers of
14 customers. They lost so much business and so much revenue and
15 their reputation took such an enormous hit that the company was
16 on the path to its own demise. And eventually all egg
17 operations everywhere were sold.

18 And there were -- I just want to go back and make a
19 point about environmental testing. There were positive
20 environmental tests in Maine as well which the company
21 understood and reacted to. But there was no Salmonella outbreak
22 there. The point is environmental testing positives do not
23 equate with a Salmonella outbreak. So there were a set of other
24 circumstances like a perfect storm which came together to create
25 this unfortunate and very tragic situation and one for which

1 Austin DeCoster will apologize when he stands here in front of
2 you.

3 As far as his reaction after that, he undertook
4 diligently to see that anyone who was injured through this
5 outbreak, that their claims were recognized and paid for. There
6 were millions of dollars of claims paid for by insurance.

7 THE COURT: Where is that in the sentencing record?

8 MR. GREEN: Pardon?

9 THE COURT: Where's either one of those statements in
10 the sentencing record?

11 MR. GREEN: I believe it's in our memorandum.

12 THE COURT: Yeah. Well, that's a good point. Do you
13 see a difference between a fact that I make at sentencing based
14 on contested evidence -- I've only made one really here, and
15 that was with regard to the Wal-Mart meeting -- or -- or the
16 other way facts can get into the sentencing record is
17 uncontested portions of the presentence report. So I'm now
18 adopting as findings of fact all of the uncontested portions of
19 the presentence report.

20 But putting a piece of information in a sentencing
21 memorandum does not make it a fact. Let me give you an example.
22 You're -- one that comes clearly to mind is 16 million dollars
23 worth of donations by Austin DeCoster in the last 14 years --
24 I'm sorry, in the last 4 years, you had that in your sentencing
25 memorandum.

1 MR. GREEN: Yes, Your Honor.

2 THE COURT: There's not a shred of evidence to support
3 that in the sentencing record other than some of the letters
4 that talk about things that he's done that would require money.
5 But there's nothing that quantifies it. There's no spreadsheet.
6 There's no certified audit. There's no financial information
7 whatsoever about this 16 million dollars. That's just something
8 you throw into the sentencing memorandum, and I guess you expect
9 me to swallow it as a fact. But it's not a fact. And the two
10 things that you just mentioned, they're not facts either.
11 They're argument. But unless -- but the only thing you can
12 argue is based on facts in the sentencing record.

13 It seems to me that that's very elementary. But I
14 constantly have lawyers who don't see the difference between a
15 fact that you can argue from and putting a fact -- putting an
16 alleged piece of -- alleged fact or information in a sentencing
17 memorandum and expecting me to accept it as true. I don't.

18 MR. GREEN: Well --

19 THE COURT: Nor should I. It would violate my oath.
20 That's not a fact.

21 MR. GREEN: Your Honor, in the traditional setting of
22 a courtroom, you're absolutely right. It's not an established
23 fact because I did not support that with documentary evidence.

24 THE COURT: Right.

25 MR. GREEN: But I assure you that I would not say that

1 to you if I did not believe that to be true.

2 THE COURT: Oh, I know you believe it to be true.
3 But, you know, if I took as a finding of fact everything that a
4 lawyer believed to be true, that would be a pretty bizarre
5 situation.

6 MR. GREEN: These two examples that we've just talked
7 about are demonstrable, and so if the Court feels that there's
8 been a deficient showing here, I mean, I think in very, very
9 short order I could -- I could substantiate that.

10 THE COURT: Well, I asked at the beginning of the
11 hearing if anybody had any witnesses. The answer was no. So,
12 you know, if you didn't understand the difference between fact
13 and argument before now, I apologize. But . . .

14 MR. GREEN: No. I understand your point. But I do --

15 THE COURT: Well, there's no buts about it, see.
16 That's the difference, Mr. Green. There is no but. You had a
17 chance to put on evidence. You elected not to.

18 MR. GREEN: I think Mr. DeCoster may be able to give
19 some evidence --

20 THE COURT: That's not evidence. It's an allocution.
21 It's different than evidence.

22 MR. GREEN: Very well, sir.

23 THE COURT: I consider allocutions, but it's not
24 evidence.

25 MR. GREEN: Your Honor, with respect to -- let me

1 address the concept of deterrence here both on the part of
2 Quality Egg and on the part of Mr. DeCoster. Since the egg
3 business has been entirely sold, I mean, there's no likelihood
4 here of any further conduct with regard to Salmonella prevention
5 and so forth. I mean, that's been terminated, and that's over
6 with.

7 As far as the deterrent on the personal level, on the
8 more personal level, we've been here now for a few hours, and I
9 hope that I've ably explained to you that with respect to the
10 other pockets of misconduct that the government and we agree
11 that on behalf of Austin DeCoster that there simply was no
12 knowledge on his part that that was occurring. So that would
13 undercut, I think, the need for deterrence as well.

14 We have agreed on a number of claims with the
15 government, and there's been an amount that has been tendered to
16 the Court for the Court's approval that can be ordered both
17 for -- not both but for the -- for restitution. And we have
18 also included in the materials that we have given the Court some
19 background on Mr. DeCoster's health. He's 80 years old and
20 suffers from a variety of conditions which I would prefer to
21 rely on my presentation rather than elaborating on here in open
22 court. But if you want me to, I will.

23 And you do have some letters from three individuals
24 attesting to his charitable endeavors. And he has --

25 THE COURT: And the letters were very impressive. And

1 what he's done and what Peter DeCoster have done, very
2 impressive. And even assuming the 16-million-dollar figure is
3 true, you know, I sent you all an e-mail, and I realize I was
4 comparing apples and oranges when I sent it. But as a
5 percentage of his net worth, while 16 million dollars sounds
6 incredibly impressive, as a percentage of his net worth, it's
7 less than the average taxpayer who earns ten to forty thousand
8 dollars a year pays -- donates in charitable deductions on an
9 annual basis. And I realize I'm comparing income to net worth
10 which is why I said apples and oranges.

11 But I think you would agree with me, Mr. Green, that
12 the average taxpayer between the 10,000 and \$50,000 a year worth
13 of taxable income pays -- I think it's about three times -- I
14 gave you the percentages in the e-mail. It's about three times
15 what Mr. DeCoster has paid over the last four years. But the
16 average person -- the average taxpayer with income of ten to
17 fifty thousand dollars does not have a trust worth in excess of
18 three hundred million dollars. Matter of fact, they don't have
19 a positive net worth. The average taxpayer that earns \$10,000 a
20 year and is giving a higher percentage of their income to
21 charity than your client not only doesn't have a big trust, they
22 don't even have a positive net worth. They live month to month,
23 and they pay a higher percentage.

24 So am I impressed by the fact that your client
25 allegedly donated 16 million dollars over the last 4 years?

1 Yeah. But compared to the average taxpayer, not impressed at
2 all, not at all.

3 MR. GREEN: Well, Your Honor, his net worth took a
4 incredible hit on the sale of this business, and it is his net
5 worth which allows him to continue to make these charitable
6 contributions. And I think that they have to stand on their
7 own.

8 THE COURT: What do you mean stand on their own?

9 MR. GREEN: Well, I don't think -- I don't think --

10 THE COURT: To whom much is given much is expected?
11 You know that proverb?

12 MR. GREEN: Well --

13 THE COURT: It's actually a biblical verse.

14 MR. GREEN: To me -- to me those are significant
15 contributions, Your Honor. To me they are. And I -- you know,
16 without regard to what the average man gives or makes, I'm well
17 aware of how people struggle in this country. I am indeed. But
18 nevertheless, I still believe those are significant charitable
19 contributions.

20 THE COURT: Well, not so significant when the
21 presentence report indicates that he's the owner of the DeCoster
22 Revocable Trust that had a net worth of over 277 million
23 dollars.

24 MR. GREEN: Well, I think it's in the eye of the
25 beholder, Your Honor. I think it's a significant -- I don't

1 want to get into an argument with the Court. I think -- I think
2 it's a significant amount of charitable contribution.

3 THE COURT: Yes, I would agree with that. It's a
4 significant amount of charitable contributions. Is it going to
5 buy your way out of prison? I don't think so.

6 MR. GREEN: Well, Judge, I'm not here -- I'm not here
7 trying to offer that as any way --

8 THE COURT: Well, why are you offering it?

9 MR. GREEN: Because I think it's indicative of the
10 man, okay, and who he is and his desire --

11 THE COURT: Well, isn't it more indicative of a
12 taxpayer that earns ten to fifty thousand dollars a year that
13 they give a higher percentage of their income to charity than
14 your client does?

15 MR. GREEN: I -- Your Honor, I don't really know about
16 those statistics. That's the honest answer.

17 THE COURT: Well, you can get them off the IRS web
18 page.

19 MR. GREEN: I don't know that I would agree with that.
20 I just don't know. I would have to delve into that. I honestly
21 would. But they're not cited to buy his way out of prison;
22 okay? This is not a recently, you know, manufactured charitable
23 contribution. These are contributions. He's made these
24 contributions for a long time.

25 THE COURT: Well, wait. Your brief said the last four

1 years.

2 MR. GREEN: Well, we gave you data on the last four
3 years, okay, but he's made charitable contributions throughout
4 his life.

5 THE COURT: Where is that in the presentence report?

6 MR. GREEN: It isn't in there.

7 THE COURT: Pardon me?

8 MR. GREEN: It isn't in there. I will have to
9 document that for you if that is what you require. I will do
10 that.

11 THE COURT: What do you mean you're going to document
12 it? When's that going to happen? After I sentence him?

13 MR. GREEN: No. We would have to ask for 24 hours or
14 36 hours.

15 THE COURT: That's not happening. You've had years to
16 get ready for this.

17 MR. GREEN: No, I understand that, Your Honor. I
18 thought that you would accept my representation.

19 THE COURT: You thought that I would accept --

20 MR. GREEN: Yes.

21 THE COURT: -- something in a brief?

22 MR. GREEN: Well, it's a brief signed by me, officer
23 of the court. I thought you would accept my representation.

24 THE COURT: Well, I can -- you know, I'm going to file
25 a relatively lengthy opinion, and I'm going to point out many

1 represen -- misrepresentations you've made in your brief. I'll
2 be happy to do that. So the answer is no, I don't accept
3 representation in briefs from anybody but let alone a party that
4 files a brief that has misrepresentations in it.

5 MR. GREEN: I'm not aware that we have
6 misrepresentations.

7 THE COURT: Well, I'm going to point them out to you.
8 I'm not shy about doing that.

9 MR. GREEN: Well, I have -- as far as --

10 THE COURT: So yes, is it a mitigating factor that
11 your client has been charitable? Yes. I agree with that.

12 MR. GREEN: All right.

13 THE COURT: Is 16 million dollars significant? Yes.
14 Is two thousand dollars from somebody who makes between ten and
15 fifty thousand dollars a year and makes an annual donation of
16 over two thousand dollars significant? Yes. More significant
17 than your client in my view.

18 MR. GREEN: Well, I tender it to you, Your Honor, for
19 the weight that you will give it.

20 THE COURT: Not much. Give it some weight.

21 MR. GREEN: Well, that -- I believe -- I believe those
22 are the mitigating --

23 THE COURT: What about his prior conviction in this
24 court?

25 MR. GREEN: I think, first of all, that the prior

1 conviction is on the cusp of, you know, the guideline period for
2 considering it. But notwithstanding that, I'm not st -- I'm not
3 standing on that.

4 THE COURT: Just a second. It's not on the cusp of me
5 being able to consider it. It's on the cusp of scoring for
6 guideline purposes. They're very different.

7 MR. GREEN: I stand corrected.

8 THE COURT: They're very different. Did you read his
9 presentence report from the prior case?

10 MR. GREEN: No.

11 THE COURT: Why not?

12 MR. GREEN: From the prior case?

13 THE COURT: Yeah.

14 MR. GREEN: No, I've not read it yet.

15 THE COURT: Well, I did, because I sentenced him.

16 MR. GREEN: But I was going to continue if I may.

17 THE COURT: No, I'm interested in the prior offense.
18 What do you know about the prior offense?

19 MR. GREEN: Well, I know it involved the hiring of
20 undocumented workers, Your Honor.

21 THE COURT: Yeah. How many?

22 MR. GREEN: I don't have that number on my -- at hand.

23 THE COURT: In excess of a hundred. How many years
24 did it go on?

25 MR. GREEN: I can't tell you that I know right now,

1 sir. I would add that the offenses are dra -- you know, in my
2 mind dramatically different. This offense to which he pled
3 guilty is a status offense as Mr. Hopson has so ably explained.
4 And it is an offense which basically alleges that this
5 Salmonella outbreak occurred on his watch and that eggs infected
6 with Salmonella were introduced into commerce. The government
7 has acknowledged that there was no knowledge on the part of
8 either Mr. DeCoster that that was, in fact, occurring or had
9 occurred. And so I see the offenses as very, very different.
10 And I would urge Your Honor that the earlier offense should not
11 play a major role in your consideration or any role in your
12 consideration.

13 THE COURT: It shouldn't play any role that he pled
14 guilty to a federal offense involving how he ran his company and
15 committed numerous violations of federal law and then as a
16 reward for one of his codefendants he transfers him to a plant
17 in Maine.

18 MR. GREEN: Are you talking about the earlier episode?

19 THE COURT: Yes.

20 MR. GREEN: Well, Your Honor, he did enter a plea to
21 that. There's been no recurring conduct.

22 THE COURT: Yeah, and he didn't terminate one of his
23 codefendants who also pled guilty. He transferred him to one of
24 his facilities in Maine. You think maybe if one of your
25 employees committed a federal offense you might let him go?

1 MR. GREEN: No. I think that's a question that you
2 could put to Mr. DeCoster, but I will tell you that Mr. --

3 THE COURT: I'll be happy to.

4 MR. GREEN: -- Mr. DeCoster is of the view that people
5 can be redeemed and that it's not necessary always to terminate
6 them or to treat them in that fashion. That's his belief.
7 That's how he runs his life in large degree. But he's never --
8 he's never been in trouble again for that, for those
9 occurrences. There was a remarkable turnaround in the hiring
10 practices of the company.

11 THE COURT: Now wait a minute. Here's what the
12 presentence report says. In 1996, DeCoster's Maine operation,
13 the egg processing plant in Maine, was fined 3.6 million
14 dollars, one of the largest fines ever imposed, for doing the
15 same thing they were convicted of in my court in 2003.

16 So for you to sit there and tell me this is somebody
17 who actually learns from his mistakes and tries to correct
18 everything, the presentence report is just the opposite.
19 Then -- I'm not done. So then after -- so his codefendant -- he
20 was the one that was responsible for getting him the
21 3.6-million-dollar fine back in '96. Then he goes to work for
22 another company. Then Mr. DeCoster rehires him, and then they
23 get in trouble. And what'd they pay for a fine? I think they
24 paid like over a million dollars in restitution and a fine back
25 in this 2003 case.

1 MR. GREEN: What was the other date that Your Honor
2 mentioned?

3 THE COURT: Well, before Austin Jack DeCoster was
4 sentenced in this 2003 case, one of his codefendants who worked
5 for him according to the uncontested portion of the presentence
6 report says in 1996 they were fined 3.6 million dollars in
7 Maine.

8 MR. GREEN: I believe my statement to the Court was
9 that since the 2003 proceeding there's been no recurrence and
10 that there's been an attempt to be fully compliant with all
11 regulations and obligations. And I don't believe there's any
12 evidence contradicting that.

13 THE COURT: Kind of surprised you didn't read the
14 prior presentence report.

15 MR. GREEN: I would like to talk a minute about
16 disparity which is one of the factors in your analysis, and I
17 think that --

18 THE COURT: Among similarly situated codefendants?

19 MR. GREEN: Well, disparity among defendants who are
20 convicted of responsible corporate officer offenses, disparity
21 in sentences among those individuals. And the point I'd like to
22 make is that with the -- I think it was two exceptions that
23 Mr. Hopson discussed with you, Your Honor, there's been no
24 sentence of incarceration for a defendant who has pled guilty to
25 a responsible corporate officer status.

1 And I will say more.

2 THE COURT: Now where is that in the presentence
3 report?

4 MR. GREEN: I don't know that it's in the presentence
5 report, but it flows from the motion that we filed and the
6 analysis that we've made and that was discussed with you during
7 argument.

8 THE COURT: Well, that was on a legal argument. We're
9 now talking about a factual argument that has then a legal
10 consequence to it. But is there any information in this
11 sentencing record to show that there would be disparity if I
12 imposed a term of incarceration?

13 MR. GREEN: Just the information that we present in
14 the motion, Your Honor.

15 THE COURT: Well, who's more culpable in this case?
16 Peter DeCoster or Jack DeCoster?

17 MR. GREEN: Well, Your Honor --

18 THE COURT: While I can consider -- this is part of my
19 question. While I can consider disparity in other cases, I've
20 always been more concerned about disparity among similarly
21 situated codefendants in the same case or in a series of cases.
22 They're charged with the same crime here. Who's more culpable?

23 MR. GREEN: Your Honor, I want to resist an opinion.

24 THE COURT: That's fine.

25 MR. GREEN: I just simply want to say I've tried my

1 best to take you through the facts as they've been for the most
2 part stipulated that apply to my client, and that's what I've
3 focused on.

4 THE COURT: And you've done an excellent job.

5 MR. GREEN: Pardon?

6 THE COURT: You've done an excellent job.

7 MR. GREEN: Thank you. And I know that you will
8 listen to both counsel and then make your decision. But I would
9 conclude just simply by saying that I think that Mr. DeCoster's
10 not running away from this unfortunate situation. He's not.

11 THE COURT: No, he pled guilty to it.

12 MR. GREEN: And he's -- but, I mean, even that -- I
13 mean, that is an expression of acceptance --

14 THE COURT: Absolutely.

15 MR. GREEN: -- of responsibility.

16 THE COURT: I agree with that.

17 MR. GREEN: He's tried to make financial amends. And
18 he has tried to live his life so that he didn't violate any
19 prior restraints or prohibitions on him from an earlier case
20 with Your Honor. And he has tried to serve and live his life as
21 an example. And this was unfortunate. But it happened on his
22 watch. And he will receive judgment at your hands for that.

23 THE COURT: Well, not too many corporate executives
24 have two federal criminal convictions on their record --

25 MR. GREEN: You're right.

1 THE COURT: -- that span over a decade.

2 MR. GREEN: You're right.

3 THE COURT: So what does that say about him, if
4 anything?

5 MR. GREEN: Well, what I've tried to convince you of
6 is it doesn't say -- I mean --

7 THE COURT: It doesn't say anything about him?

8 MR. GREEN: It does -- if I may, it doesn't say that
9 he didn't make a mistake in 2003 because he did. But to equate
10 that with what has happened here and with the fact that he --
11 his conviction follows from the fact that there is a law in this
12 country that can make him responsible for misconduct that
13 occurred on his watch. But I think when you look at the
14 totality of the circumstances, you know, there was no attempt
15 here to violate the law. This is a case of unintended
16 consequences. Nobody -- I don't think that these epidemics of
17 this type are easily analyzed. But it wasn't because he went
18 out and did something or tried to make it happen. He ran his
19 company.

20 THE COURT: That would be pretty farfetched that he
21 would try and make a Salmonella --

22 MR. GREEN: But I'm trying to draw distinctions
23 between this situation and what occurred ten years ago, over ten
24 years ago, because I think distinctions are justified.

25 THE COURT: Well, here's a distinction for you. Ten

1 years ago he hired people who routinely violated federal law.
2 And while the presentence report ten years ago said he was
3 intimately involved in every detail including reviewing all the
4 bills that got paid, all of a sudden he didn't have any
5 knowledge that they had recruiters along the border recruiting
6 illegals. And then, you know, when they found out that there
7 were some illegals and the government forced him to terminate
8 them, they hired them back a few months later with different
9 names. That's how he ran his company. You can't hide from the
10 record.

11 MR. GREEN: That's how he ran his company over ten
12 years ago.

13 THE COURT: And he ran a company where federal
14 officials got bribed. How often does that happen?

15 MR. GREEN: Well, Your Honor, it happens.

16 THE COURT: Yeah. Well, I've sentenced over 4,000
17 people, and I've never had it happen. And I've never had a
18 corporate executive be a repeat offender in this court. And
19 I've been at it for 21 years. He's the first one, first repeat
20 offender.

21 MR. GREEN: Well, I respectfully submit to you that
22 there is still a meaningful distinction, many meaningful
23 distinctions, between what happened in 2003 --

24 THE COURT: Absolutely. There are more distinctions
25 than there are differences, but there -- I mean -- I'm sorry.

1 There's more differences than there are similarities. But
2 there's one overriding similarity: He ran a company with
3 employees that violated federal law with impunity.

4 MR. GREEN: Are we talking about 2003 now or . . .

5 THE COURT: Yeah. Well, is there another time he's
6 been convicted --

7 MR. GREEN: No, but --

8 THE COURT: -- that I need to be aware of?

9 MR. GREEN: No, but I think the rec -- I think -- I
10 mean, he's never been rebuked for that kind of conduct since he
11 appeared in your court.

12 THE COURT: Well, how many times do you think
13 executives get convicted in federal court? I'm supposed to
14 what? Pin a medal on him because he only got convicted twice
15 and not three times? Is that your argument?

16 MR. GREEN: No.

17 THE COURT: I'm sorry, Mr. Green. I'm missing the
18 point.

19 MR. GREEN: My argument is that he made a mistake over
20 ten years ago, and he corrected his behavior. In fact, there's
21 a letter in there I think from the Mexican -- one of the Mexican
22 authorities or ministries saying how he, you know, cleaned up
23 the employment situation. He worked hard to remedy, to rectify,
24 and to see that that didn't happen again. Now 15 years, 12
25 years later, we have a Salmonella outbreak. I understand that

1 because of that outbreak and because of his status he's back
2 here in your courtroom. But I honestly, you know, feel and
3 submit to you that those are such disparate events that they
4 should not bear any meaningful relation in your mind as you pass
5 sentence on Mr. DeCoster.

6 THE COURT: I understand you believe that.

7 MR. GREEN: It's also my hope.

8 THE COURT: It's good to have hope. And I want you to
9 know -- I said at the beginning I've spent more time on these
10 three misdemeanor convictions than I've spent on sentencing in
11 any case. And I'm still considering all possible ranges. And
12 about 80 percent of the time -- you ask the lawyers -- I give a
13 different sentence than what I thought I was going to do when I
14 come out on the bench. And I've considered every possible
15 sentence and still am from probation to the maximum sentence of
16 a year. And I have not made up my mind what the sentence should
17 be.

18 So you're still able to convince me. Anything else
19 you'd like to argue? Be happy to hear anything you want to
20 argue.

21 MR. GREEN: Well, I think -- I think from our
22 perspective, Your Honor, I've tried -- what I -- let me -- I
23 came to this courtroom principally concerned about the
24 Salmonella outbreak because I think at -- you know, when all is
25 said and done --

1 THE COURT: That's the crime of conviction.

2 MR. GREEN: Yeah. I mean, that's at the core of this
3 problem. And based on our analysis of this entire investigation
4 record -- let's put it that way, if I may, because it isn't all
5 here in this -- in this courtroom -- I became convinced that the
6 DeCosters as evidence of a rise in incidence of environmental,
7 you know, positives got cracking; okay?

8 Now, they hired experts, and they cleaned their barns,
9 and they undertook a lot of measures that were designed to try
10 to help them evaluate what the potential for risk was here. And
11 they didn't see this coming. And I don't think the experts saw
12 this coming.

13 And when it happened, they jumped on it. I mean, it's
14 not -- it's not a case of a couple of executives who simply
15 ignored it. I mean, they were incredibly concerned, and they
16 set out to recall, as I say, millions upon millions of eggs at
17 great cost and expense and detriment, loss of customers,
18 ultimately the loss of their company.

19 So for me when I look at that -- when I look at that
20 picture, it's not that I give them a gold star. But I do say
21 that they acted appropriately, expeditiously, and tried to do
22 what they could to react to this problem and contain it. As a
23 result, they ultimately lost their business. They lost millions
24 of dollars.

25 I'm well aware that you've pointed out and criticized

1 me for the fact that that's not all documented, and I accept
2 your criticism. But I believe that this situation is different
3 from your earlier encounter with my client.

4 I think they've paid a terrible price in loss of
5 reputation and a financial penalty already, and they're going to
6 pay another, I think, significant, very significant, financial
7 penalty if Your Honor accepts the figure that's been submitted
8 to you for your approval.

9 And Mr. DeCoster, as I say, is out of the egg
10 business. And he will continue -- if people appear who are yet
11 uncompensated or injured if indeed there are such individuals,
12 they will be taken care of. And that is essentially what I want
13 to leave with the Court. I think this company stepped up to the
14 plate and tried to do what was appropriate.

15 THE COURT: Thank you. Anything else?

16 MR. GREEN: No, sir.

17 THE COURT: Okay. Thank you.

18 Mr. Deegan?

19 MR. DEEGAN: Thank you, Your Honor. And I'm going to
20 do my very best not to be repetitive of what's in my brief or
21 other comments that I made earlier in the sentencing.

22 I already addressed what the government feels were the
23 problems with the response to the environmental tests and the
24 timing of that response. So I don't -- I think the record is
25 that they didn't get cracking on responding to the environmental

1 positives. It happened too late. And I believe that it's a
2 fair reading of the record to say it had more to do with the egg
3 rule than anything else. Otherwise, it may have happened
4 earlier. Somebody -- an expert would have been sent to Iowa to
5 try to address the problem.

6 I do want to talk a little bit more about the
7 individual characteristics. And there, Your Honor, I do think
8 that it is very unusual.

9 First of all, on the topic of charitable contributions
10 and good works, I know the Court has sentenced many, many
11 defendants for business crimes. And in my experience that's a
12 fairly common type of argument that's made that folks that have
13 successful businesses, have resources can often come in and
14 point to examples of where they've done good works. And that's
15 all fine and good. But I don't know that it makes Mr. Jack
16 DeCoster's case very unique or Peter DeCoster's case, for that
17 matter.

18 What really makes Jack DeCoster's case unique is the
19 fact that he is a business crime defendant who has a record of
20 other business crimes. And, Your Honor, I'll just leave you
21 with that's something that I think the Court can take into
22 account and should take into account in this case and give
23 weight to in arriving at an appropriate sentence.

24 THE COURT: I wanted to ask you about intracase
25 disparity considering the two cases combined. Who's more

1 culpable in the government's view, Austin Jack DeCoster or Peter
2 DeCoster, taking into consideration Peter does not have a prior
3 criminal record in this court and Jack DeCoster does?

4 MR. DEEGAN: Yes, Your Honor. And again, I'll preface
5 everything I say by stating we're not taking a position on the
6 type of sentence imposed --

7 THE COURT: Yes.

8 MR. DEEGAN: -- pursuant to the plea agreements.

9 THE COURT: And I didn't ask you to.

10 MR. DEEGAN: I appreciate that. Thank you. But, Your
11 Honor, I do think that that's the big distinction is Mr. Jack
12 DeCoster's prior record that doesn't exist in Mr. Peter
13 DeCoster's case.

14 That being said, there are a couple things with Peter
15 DeCoster's role at Quality Egg that I think are significant. If
16 you start with -- going back several years with the Wal-Mart
17 presentation, you know, here is the chief operating officer, the
18 guy -- you know, the boots on the ground in Iowa responsible for
19 running Quality Egg in Iowa, and he is at a meeting making
20 statements about flock testing that just simply didn't happen.
21 That does a couple things. It says that at least he's willing
22 to present something that he doesn't know to be true because it
23 wasn't true that it was happening.

24 THE COURT: But there's -- is there any evidence in
25 the sentencing record that he knew those statements were --

1 there's evidence that the statements were false.

2 MR. DEEGAN: That's correct.

3 THE COURT: But is there any evidence that Peter
4 DeCoster knew that those statements were false?

5 MR. DEEGAN: Your Honor, we don't have any direct
6 evidence going to that point. However, I would say that given
7 his role at the company and the fact that he's the one doing
8 most of the talking at the presentation and the presentation
9 says what it is, he should have known whether they were false or
10 not, and they were false. So I think that's aggravating and I
11 think that the fact that the sham AIB audits that were going on
12 were happening while he's the chief operating officer on the
13 ground in Iowa.

14 And while, you know, documents are being produced, we
15 don't have evidence that he knows of documents being produced
16 for the audit. Manufactured I should say for the audit. But
17 that's not taking any sort of food safety measure seriously when
18 that type of activity's happening.

19 And then you, I think, go to an even more significant
20 example when you get to the bribing of the U.S.D.A. inspector.
21 I mean, those eggs were retained because they didn't meet
22 minimum quality standards for the U.S.D.A. They had more than
23 10 percent checks in them. And again, it's a -- it's profit
24 over food safety when you say, well, for 300 bucks that we can
25 get them moved on down the road as opposed to the cost of either

1 rerunning them through the machine or sending them off to the
2 breaker where they can be pasteurized and getting about 50
3 percent value.

4 So it's -- again, it's a profit over a safety kind of
5 culture. And again, Peter DeCoster's the one in Iowa who is the
6 chief operating officer, and he's responsible. So those are all
7 things that are aggravating.

8 But I still come back to in this case that the real
9 distinction between Jack -- Defendant Jack DeCoster and Peter
10 DeCoster is the prior criminal convictions of Jack DeCoster.

11 THE COURT: Well, but -- okay. What about the fact
12 that he's older? He's 80, and he has some health conditions,
13 although actually he's taking less medications than I am by a
14 factor of a couple multiples, and I'm not 80 yet. So he's
15 actually in pretty good health. And I want you to talk about
16 his age and health as to how I should consider them. I mean,
17 they both are potentially mitigating. I don't find the health
18 issues to be very mitigating in this case because he's actually
19 in quite good health.

20 MR. DEEGAN: I think that's absolutely correct.

21 THE COURT: For somebody who's 80.

22 MR. DEEGAN: For a man of his age, he appears to be
23 healthy. And I would say a couple things. Number one, that
24 within the range of discretion the Court has about the types of
25 sentences that the Court could impose, again, I don't want to

1 say this in a way that sounds like I'm advocating for any
2 particular type of sentence with regard to custody except to say
3 that it can't be more than a year, and I think that's
4 significant. It's not as if you're going to send a man with
5 health conditions of a sort or an age of a certain -- you know,
6 which may make you more frail, et cetera, off to prison for 15
7 years. That's not going to happen in this case.

8 So I think that sort of tempers whether or not those
9 are really significant factors the Court -- but I do think
10 absolutely age and health, the Court needs to take those into
11 account in deciding what an appropriate sentence is. And I know
12 the Court will. But I don't know that those turn out to be the
13 most significant factors when the Court is deciding what type of
14 a sentence to impose.

15 THE COURT: But are you open to the possibility that
16 using your analysis if Austin Jack DeCoster is more culpable
17 largely because of his prior record in this court that his age
18 and health may offset that so that there might not be a
19 difference in what sentence both defendants should receive?

20 MR. DEEGAN: Your Honor, I think that is a
21 reasonable -- it's certainly within the realm of an acceptable
22 approach for the Court to take. And I can understand where the
23 Court's coming from with that.

24 THE COURT: And just to make sure I understand, you're
25 not opposed to probation for either defendant.

1 MR. DEEGAN: We're leaving that entirely up to the
2 Court, so no, we aren't objecting to any particular type of
3 sentence. We're confident the Court is well advised of the
4 facts and circumstances, and we're willing to leave it to the
5 Court's discretion.

6 Your Honor, I would like to say that once we get
7 closer to one o'clock, we do run into a timing issue with regard
8 to our victim representative.

9 THE COURT: Okay. Why don't we -- do you want to
10 respond now, Mr. Dornan?

11 MR. DEEGAN: We still have time.

12 THE COURT: Okay. You want to go ahead and respond?

13 MR. DORNAN: Sure, Judge. Judge, I think you have
14 identified the pertinent issues with respect to this, and I'm
15 not abandoning my argument. But I'm certainly going to latch on
16 to the Court's question without further testimony here today and
17 further evidence as to if, in fact, Mr. DeCoster made those
18 statements at Wal-Mart that he knew that they were false. The
19 government carries that burden. I know this Court is very
20 particular with respect to the evidence that is produced or not
21 produced. And I don't think the Court simply has enough
22 evidence at this point in time to make a finding that
23 Mr. DeCoster, if he did make those statements, were, in fact --
24 there's sufficient evidence to conclude that they were false. I
25 agree --

1 THE COURT: Do you think I have enough information to
2 make a finding that he should have known they were false?
3 Assuming I agree with you that there's not sufficient evidence
4 in the sentencing record that I could find that he knew they
5 were false, could I find that he should have known they were
6 false because he's been identified as the chief operating
7 officer? How could the chief operating officer not know that
8 there was a flock program and the other -- the SQ --

9 MR. DORNAN: Well, I guess, Judge, it would -- I would
10 go back to the apparent confusion as to what presentation was
11 going to be presented. I don't know that it's outside the realm
12 of possibility, Judge, that maybe the wrong presentation was
13 even grabbed but that this was a matter that was in flux.

14 So I guess the best evidence is what Mr. DeCoster sent
15 to Mr. Crawford as far as being the absence of that information
16 in there. I think the Court can place significant evidence or
17 significant weight on that as far as not making a finding with
18 respect to recklessness or should have known.

19 THE COURT: Well, let me ask you this. Paragraph 6 of
20 the stipulation says that had she been called as a witness
21 Alison Marshall who's identified in paragraph 4 as a clerical
22 worker for Quality Egg, she knew it was false. So the clerical
23 worker knows these statements are false, but the chief operating
24 officer doesn't? Pardon me for being skeptical. How does that
25 work?

1 MR. DORNAN: Well, you know, it's hard for me. I'm
2 making an argument here, Judge, you know, first and foremost
3 they didn't make them, so I have to stand on that.

4 But I guess it would go to, Judge, the amount of time
5 and again the -- what was paid attention to with respect to that
6 particular presentation. I don't think you have any evidence
7 that Mr. DeCoster, if he did make those statements,
8 intentionally misled. Could they be -- should he have known or
9 could they have considered a reckless omission? I guess you
10 sure could. But I don't think that that's the sort of
11 aggravating circumstance with respect to what Mr. DeCoster pled
12 to as a responsible corporate officer of something that would
13 have occurred more --

14 THE COURT: Well, that's a different question. In
15 case you forgot, my question was how does a clerical worker know
16 but the chief operating officer doesn't?

17 MR. DORNAN: Judge, I guess the only thing I would say
18 would be I don't know that a clerical worker's memory with
19 respect to what was discussed there would be --

20 THE COURT: Yeah, the only way to find that out would
21 have been had you not entered into a stipulation, the witness
22 was called live subject to cross-examination and the
23 confrontation clause. But for whatever reason you elected not
24 to do that. So that's not really an answer to my question as to
25 how a secretary would know these statements are false but a

1 chief operating officer would not know.

2 MR. DORNAN: What I've given you, Judge, is the best
3 explanation that I can provide to you right now.

4 THE COURT: And, Mr. Dornan, that's all you can do, so
5 I appreciate that.

6 Why don't we hear from the victim. And, Mr. Deegan,
7 have you instructed him that he can just use the initials of his
8 son if he doesn't want to use his name consistent with our . . .

9 MR. DEEGAN: Your Honor, he's aware now. Thank you.

10 THE COURT: Okay. Thank you. Why don't you just step
11 up to the podium. Are you comfortable there, sir?

12 MR. TUCKER: Yes, sir.

13 THE COURT: Okay.

14 MR. TUCKER: Yes, Your Honor.

15 THE COURT: Okay. And could -- welcome, and thank you
16 for coming. Would you just tell us all your name and then I'll
17 turn it over to you.

18 MR. TUCKER: My name is Jason Tucker.

19 THE COURT: Thank you, Mr. Tucker.

20 MR. TUCKER: Thank you, first of all, for letting me
21 be here to speak on my son's behalf.

22 I wanted to come here and just speak from my heart,
23 and it -- there's just too much, too much thought, so I had to
24 make some notes.

25 THE COURT: I appreciate that. Thank you.

1 MR. TUCKER: I've written some things down here just
2 to kind of stay on track.

3 You know, my son is not only one of the greatest loves
4 of my life but my best friend. In all honesty, I cannot begin
5 to imagine what I would do without him in my life. And we
6 almost lost him at three years old to Salmonella, bone, and
7 blood infection. He was in the ICU at Children's Medical
8 Hospital for eight days, quarantined for a portion of that.

9 While there, he received the heaviest dose of IV
10 antibiotics a three-year-old of his weight was allowed. This
11 was followed by six weeks of oral antibiotics, again, the
12 strongest possible. Although we never left his side, he
13 almost -- he was almost unrecognizable to us.

14 What a lot of people don't know is the link between
15 high fevers, the use of antibiotics in infants and young
16 children, and horrible enamel defects in adult teeth that come
17 in later. We ourselves never knew that until the pedia -- his
18 pediatric dentist explained it to us.

19 We're told he'll have to have stainless steel crowns
20 on many of his teeth as children are too tough for porcelain on
21 their teeth. Later we can look at full dental implants.

22 You know, he's Mr. Popular. We constantly just
23 receive calls from parents and from friends wanting him to come
24 over, play dates and sleepovers. They always want him around,
25 all the birthday parties and everything else. And, I mean, he

1 does so much in Scouting, raises money for the Scouts and leads
2 hikes. I mean, he's eight years old. He's just -- he's
3 awesome.

4 I mean, the parents want him over as much as the
5 children. You know, they're just impressed with how honest he
6 is and how -- just how sweet and kind and tender. And, you
7 know, he's an amazing artist, piano player, soccer. He gardens.
8 Everybody looks up to him.

9 And now at eight years old I'm watching him cover up
10 his smile with his mouth, you know, because his adult teeth are
11 coming in. And he's covering his smile up, you know. I'm
12 seeing him avoid conversation. He's keeping his head down as he
13 knows the answer to a question asked. Instead of answering it,
14 I'm watching the most brilliant young man become self-conscious
15 of his teeth at eight years old.

16 He's the type of child that can make such a difference
17 in the world, and I watch him do it in small steps every day.
18 His strengths and beliefs are admirable, and I could not be any
19 prouder than I am. I don't know anyone of any age so
20 considerate of others' feelings, so quick to see the answer to a
21 problem, so quick to help anyone with a chance that arises. And
22 it's not a choice. It's just what he does. It's what he is.

23 And when we talk about the future, he wishes to be an
24 architect or an archeologist. He wants to help people, people
25 that go without. He talks about soup kitchens. I don't know

1 any eight-year-old that knows what a soup kitchen is. As smart
2 and popular as he is, it truly breaks my heart knowing that each
3 tooth he has and all that follows will be capped in stainless
4 steel.

5 As hard as we try to downplay it in front of him what
6 is happening, he knows. And I'm watching this brilliant little
7 man retreat inward. And it breaks my heart, and I pray that he
8 continues to be -- continues being the strong young man who
9 walks proudly with his head held high. I also pray that the
10 children in his path to adulthood can find some kindness around
11 him.

12 It would take someone with his kind heart and spirit,
13 someone exactly like him to look past his smile and see the real
14 beauty that is my son. If the world was full of children with
15 compassion, my worries would not be as they are, but it is, and
16 his future is compromised. I hope just -- just touching -- just
17 scratching on the surface today will make some sort of
18 difference. And thank you for letting me share -- thank you.

19 THE COURT: Mr. Tucker, thank you. May I ask you a
20 question?

21 MR. TUCKER: Yes.

22 THE COURT: I don't want to even know the city you
23 came from, but how far did you come to share this with us?

24 MR. TUCKER: Dallas, Dallas, Texas.

25 THE COURT: Dallas, Texas. Would you do me a favor --

1 MR. TUCKER: Yes.

2 THE COURT: -- if you can accommodate it?

3 MR. TUCKER: Pardon?

4 THE COURT: If you can accommodate my favor?

5 MR. TUCKER: Yes.

6 THE COURT: Would you tell your son what an
7 extraordinary young man he is.

8 MR. TUCKER: I will. I look forward to it.

9 THE COURT: I didn't meet him, but I felt like I have.
10 I felt like I've met him through you.

11 MR. TUCKER: He's amazing. He's amazing.

12 THE COURT: And thank you so much.

13 MR. TUCKER: Amazing. Thank you.

14 THE COURT: Thank you so much for coming. I'm sorry
15 that you had to sit through all the legal mumbo jumbo and wait
16 so long.

17 MR. TUCKER: No.

18 THE COURT: But it means a lot to me that you were
19 willing to come here and take time out of your busy life and
20 tell us about your son and how the Salmonella affected him.

21 MR. TUCKER: Thank you for having me. Thank you.

22 THE COURT: Thank you for coming.

23 I just wanted to ask. I assume Mr. Deegan would know,
24 but are there any other people in the courtroom who are victims
25 or victim representatives? If there are, you can come forward

1 and speak.

2 Okay.

3 MR. DEEGAN: Thank you, Your Honor. None that we know
4 of.

5 THE COURT: Okay. Thank you. Here's what I'd like to
6 do now. I'd like to take the allocutions, and then I'd like to
7 take a little late lunch break so I can think about all of this,
8 and the record will essentially be closed, and then I'll come
9 back and pronounce sentence.

10 So we'll start with the -- Mr. Green, I don't know
11 what you want to do with the corporation. I don't think they
12 have a right of allocution, but if Mr. DeCoster wants to
13 allocute on behalf of the corporation, he can. If we can
14 combine them, that's fine. Whatever your pleasure.

15 MR. GREEN: Your Honor, I think that through the
16 questions that you've asked this morning and the directions that
17 you've led the conversation and the discussions that there's
18 very little that I could add to what I've already said about the
19 corporation, simply to make one final point --

20 THE COURT: Yes.

21 MR. GREEN: -- that I think I made earlier but to just
22 recast it if I may, and that is that the two gentlemen that I
23 think probably bear most of the responsibility for what happened
24 at this company are not in this courtroom, at least not in this
25 courtroom today.

1 THE COURT: Well, not yet, at least one of them.
2 Right.

3 MR. GREEN: Yeah.

4 THE COURT: He's coming. I think it's September.

5 MR. GREEN: We understand that. And so that the
6 corporation is here principally in the role as a vicariously
7 liable defendant for the acts of their misconduct. And I've
8 tried to explain in the last few minutes what this company did
9 when they learned about this outbreak. And the story we just
10 listened to is tragic and sad indeed, and the company is
11 extremely sorry that this outbreak occurred. I mean,
12 Mr. DeCoster probably have --

13 THE COURT: No, the company isn't sorry because the
14 company doesn't have feelings.

15 MR. GREEN: Well, the company -- to the extent that I
16 embody those who were at the top tier of the company, they are
17 saddened by this event.

18 THE COURT: Oh. There's no doubt in my mind that both
19 Peter and Austin DeCoster are saddened by what we just heard.

20 MR. GREEN: So that -- that's my remarks, sir, on
21 behalf of the company. And basically on behalf of Mr. DeCoster
22 when that -- when that time arrives --

23 THE COURT: That time is now.

24 MR. GREEN: Okay.

25 THE COURT: Okay?

1 MR. GREEN: I -- if you'll allow me to just go back
2 and repeat again a portion of what I said earlier, and that is
3 that through the process of winnowing the facts here and
4 statement of facts that all of these other episodes of
5 misconduct were not ones that were consciously known to
6 Mr. DeCoster. He is here in his role as captain of the ship and
7 that this outbreak occurred on his watch, and he acknowledges
8 that.

9 Mr. DeCoster, do you want to come forward and say
10 anything to His Honor? May he approach, Your Honor?

11 THE COURT: You may, Mr. DeCoster. And I just wanted
12 to give you the following information. You have a right to say
13 anything to me you want to that I can consider in sentencing.
14 But you don't have to say anything. You have an absolute right
15 under the Fifth Amendment of the United States Constitution to
16 remain silent. If you decide not to say anything, I will not
17 hold that against you in any way. But if you'd like to say
18 something, I can consider it. Sometimes it helps defendants.
19 Sometimes it hurts defendants. And sometimes it has no impact
20 on my sentence. But if you'd like to say something, I'd be
21 happy to hear what you have to say.

22 DEFENDANT AUSTIN DECOSTER: Well, I'd like to say
23 something, but I have a problem hearing. I don't know. Maybe
24 I'll cause the Court too much time, aggravation, and what have
25 you if I do talk. You have to put up with it if I do.

1 THE COURT: I'll be glad to put up with it.

2 DEFENDANT AUSTIN DECOSTER: Will you?

3 THE COURT: Yes.

4 DEFENDANT AUSTIN DECOSTER: I'd like to talk then.

5 THE COURT: Okay. Thank you.

6 DEFENDANT AUSTIN DECOSTER: On this bribe, it's an
7 absolute fact that I knew nothing about the bribe; okay? The
8 government's pursued this, okay, and like Mr. Green said, I
9 don't want to -- I'm not trying to be mean about it, but they've
10 pursued it and pursued it. I knew absolutely nothing about it.
11 I learned it from Jan Mohrfeld down at Bill's office and --
12 maybe a year and a half to two and a half -- at least a year and
13 a half later. That's one thing.

14 The other thing is I feel that we did a lot as far as
15 SE went. I feel that we really tried hard on the SE. We hired
16 Hofacre. Dr. Hofacre is a very smart man, takes little time to
17 get right to the issues. And we did what he told us to do. We
18 would have a meeting, and we would go to the meeting, and we
19 would listen to what he told us to do. And then as best as we
20 could, we went out and tried to execute it. We went out and we
21 tried to execute it; okay?

22 We never tested any of our -- we never -- let me see
23 what I'm try -- we never -- well, first of all, by law we didn't
24 have to do this. But what good operator wouldn't take care of
25 his chickens properly if he knew something? You'd agree with

1 that I'd think, Your Honor. Yeah.

2 THE COURT: I would.

3 DEFENDANT AUSTIN DECOSTER: Yes. So the point is when
4 he would tell us to do something, we would go get it executed as
5 best as we could. I'm not saying that we always did everything
6 right; okay? We started vaccinating our chickens up in Maine.

7 This is going to take a while. Is that okay?

8 THE COURT: That's okay. I'm all ears.

9 DEFENDANT AUSTIN DECOSTER: Okay. We started
10 vaccinating our chickens up in Maine in approximately March -- I
11 believe it was '08. And we was having troubles in Maine with
12 SE, environment -- environmental. We was called over to the
13 state house. We went over. We seen the commissioner of
14 agriculture, and we saw -- and we saw Dr. Hoenig. Dr. Hoenig
15 said we've gotta do something because this environmental were
16 spreading; okay?

17 So they suggested we start vaccinating. So we did
18 vaccinate. And then when we first started, we didn't vaccinate
19 properly. The crews didn't do the work properly. So Dr. Hoenig
20 came up with a way, and I believe Hofacre was helping him.

21 And another thing, the state wanted me to hire a
22 veterinarian; okay? So that's why we hired Dr. Hofacre, the
23 state meaning Dr. Hoenig. We hired him. We started vaccinating
24 the chickens or said that we didn't vaccinate them properly to
25 start with. The crews didn't do the work right.

1 So they developed a way to test the chickens. We
2 tested 60 of them out of so many. And then the test would tell
3 us what percentage of the chickens -- he has this little book he
4 had there. It was a statistical book. And he claimed that he
5 could prove this because of this book as a doctor, Dr. Hofacre.

6 So we tested so many chickens. The chickens would
7 tell us then what kind of a job qualitywise we did in
8 vaccinating the whole flock. And if we didn't get them 80
9 percent, if we didn't vaccinate the chickens 80 percent, then we
10 had to go back and revaccinate the whole flock. Are you
11 following me, Your Honor?

12 THE COURT: I am.

13 DEFENDANT AUSTIN DECOSTER: Yeah. We had to go back
14 and vaccinate the whole flock.

15 So that's down the road a ways. Now we start in
16 March. I don't know just when we got infected. But after a
17 while -- and this is serious business too because we vaccinated
18 a hundred chickens down in -- no, we vaccinated brooders 5 and 6
19 we called them, and Dr. Opitz went down and tested those
20 chickens, and we found not one of those chickens had been
21 vaccinated even though the whole house -- even though both
22 houses had been vaccinated. He tested them. Not one of the
23 chickens had been vaccinated. Do you follow me?

24 THE COURT: I do.

25 DEFENDANT AUSTIN DECOSTER: Yeah. So that was part of

1 really getting this thing perfected. Well, like I said, we
2 started vaccinating in March and took several months getting
3 this stuff perfected. And I'm going to say -- go from March
4 around to March again, then go from March to November. I think
5 we had another positive in Maine in the 50s. And before that,
6 before we started vaccinating them, the SE and positives had --
7 they had expanded up into the 40s, complex we call the 40s. The
8 complex was the 50s. So we had one positive test in the 50s,
9 and I think it was March to March and to November, then no more
10 ever positives in Maine.

11 So what we did is approximately -- approximately about
12 a year later or even a little later when we find out the vaccine
13 works so good in Maine, we started a vaccine in Iowa.

14 Now, the government at this time never would admit the
15 vaccination was the proper thing to do with the problem -- with
16 taking care of the problem. But we seen after that it's the
17 only thing to do. So we started vaccinating in Iowa once. We
18 started vaccinating the chickens in Iowa once. In Maine we
19 vaccinated twice. If you ask me why didn't we do it twice in
20 Iowa, I don't know. I can't remember. I'm speaking truth here.

21 So after we vaccinated once in Iowa -- and I'm going
22 to say we started about Julyish -- around February we started
23 checking to see if the vaccine is working. It wasn't working
24 very good. So I told one of our people we gotta vaccinate them
25 twice like we did in Maine. That's the only thing to do.

1 So we started vaccinating twice in February -- I think
2 it's February, came around into the spring like, say, Aprilish,
3 still wasn't working good enough, but it was an improvement.
4 You could see it was an improvement.

5 So then when the government says some of the things
6 they say, I think they're misinformed. The stories that they
7 got are not correct. And so we started vaccinating twice, and
8 then July 9 is when the egg rule came in; okay? But before that
9 we had already started twice. We would have been -- Your Honor,
10 Judge, we would have been able to solve all our problems in Iowa
11 just like Maine if we -- we run out of time.

12 Now, you said this was a theory this morning he was
13 telling you about this perfect storm. I think you're right.
14 But Doc Hofacre -- we vaccinated in our hatcheries. We stopped
15 vaccinating one way and started another vaccinating in the
16 hatchery. And it seemed like our chickens had very low
17 immunity, died a lot, didn't do good, got a lot of
18 laryngotracheitis, nothing to do with eggs, but it's a lot to do
19 with the health of the chickens.

20 So when he said it was the perfect storm, that's what
21 he meant, Dr. Hofacre. I think he meant by vaccinations that we
22 was using was hurting the immune system of the chickens so that
23 the vaccine that we was using wasn't as effective.

24 So, Your Honor, I don't know what to tell you because
25 when I was here in your court ten years ago, I feel you was --

1 treated me extremely good, very good. Jerry Crawford was my
2 lawyer. And you treated me very good. I'm very sorry that I'm
3 back here. It cost us our business. It cost these people --
4 you know, these people got sick, and, Your Honor, I don't know
5 what you think about praying, but I prayed for these people a
6 lot. I gave them a lot of money. I prayed for them a lot.
7 I'll tell you some of the things I prayed for them. I prayed
8 for them to -- that they'd get healed, that they'd get well,
9 that they wouldn't be sick. I prayed that God would bless them
10 and help them, and I was serious with God. You know, Your
11 Honor, I'm standing before God now. God's the one I'm worried
12 about. You can throw me in jail, Your Honor, but that's all you
13 can do to me. I gotta meet up with God one day, so trust me, I
14 am telling you what I prayed for; okay, Your Honor?

15 THE COURT: I believe you.

16 DEFENDANT AUSTIN DECOSTER: Thank you. Okay.

17 THE COURT: And she's a lot more powerful than I am.

18 DEFENDANT AUSTIN DECOSTER: Huh?

19 THE COURT: I said she's a -- she, meaning God, is a
20 lot more powerful than I am. I'm fully aware of that.

21 DEFENDANT AUSTIN DECOSTER: Yeah. Yeah. Anyway,
22 okay. Let's see. I prayed for them. I made that clear; right?

23 THE COURT: You did.

24 DEFENDANT AUSTIN DECOSTER: And I'm very sorry. I'm
25 almost calling you a preacher here. I don't know why. But,

1 Your Honor, I am very sorry, and I don't know if we did a very
2 good job presenting our stuff here to you. But . . .

3 THE COURT: No, you did a great -- the lawyers did a
4 great job.

5 DEFENDANT AUSTIN DECOSTER: Yeah.

6 THE COURT: You're very, very well represented. They
7 filed -- they raised this incredible constitutional argument,
8 did a great job briefing, and filed more exhibits. That's one
9 of the reasons why I spent so much time on this case. I had a
10 lot to read and study, and it's because your lawyers did an
11 excellent job on your behalf.

12 DEFENDANT AUSTIN DECOSTER: Okay, Your Honor.
13 Whatever you do with me, I still think you're a great judge.

14 THE COURT: Well, thank you.

15 DEFENDANT AUSTIN DECOSTER: I mean that seriously.
16 Thank you.

17 THE COURT: Thank you, Mr. DeCoster.

18 Peter DeCoster, would you like to say something?
19 Yeah, you can just come up. I need to give you the same -- my
20 little warning. You have a right not to say anything. If you
21 exercise your right to remain silent protected by the Sixth --
22 Fifth Amendment of the United States Constitution, I will not
23 hold it against you in any way. You don't have to say anything.
24 But if you'd like to say something, I'd be happy to hear what
25 you have to say.

1 DEFENDANT PETER DECOSTER: I would, Your Honor. And
2 thank you for letting me speak. I guess probably the thing
3 that's had the most impact on me in dealing with this whole
4 thing is reading these victim impact statements. You know, and
5 I guess I don't really know why they fill these reports out.
6 But I was able to get them and read through them. And, you
7 know, just what the people had to go through and then, you know,
8 Mr. Tucker and his boy -- I got a -- I got a nine-year-old boy
9 right now, so he would have been young at this time period, and
10 I was getting eggs out of the plants from the same flocks. I
11 mean, there's no way that I would have any interest in people
12 outside that we're selling product to but as well as my own
13 family. I mean, they -- they were kind of the test, so to
14 speak, because we were all eating the same eggs.

15 And so I guess I have a lot of empathy for the -- for
16 like Mr. Tucker especially, you know, because I probably know
17 his story the best because I read the -- I remember the victim
18 impact statement that his wife had filled out. So, I mean, I'm
19 deeply sorry for especially the children that got sick but
20 everybody that got sick. I mean, I've had food poisoning. It's
21 no fun. I mean, nobody -- you know, middle of the night, you
22 know, even just a child getting a cold, you know, or flu,
23 they're up, throw up in the middle of the night or they have to
24 go to the bathroom, and, you know, you sit up with them. You
25 know, I've done that with my kids, and I just -- I can't imagine

1 what he's gone through and his -- I mean, other than I'm sorry.
2 I mean, I don't know what else I can -- I mean, you feel very
3 inadequate when you're dealing with a situation like that.

4 And it goes back to when we got called before
5 Congress, you know. They had -- there were some victims there.
6 I remember this one older lady. I don't know how much older
7 than I she was, but she might have been 70. And she had got
8 really sick having eggs at a restaurant. And then there's
9 another younger lady that maybe she was 30 and she got very
10 sick. And just, you know, listening to these people, you know,
11 had -- you just never want that to happen to people. I mean, no
12 desire.

13 And that's -- and I guess that's probably why back
14 when FDA had called us about the Minnesota restaurant that
15 appeared to have some kind of food poisoning, you know, I'd want
16 to get those eggs tested right away because if it was truly the
17 eggs, we'd want to get it stopped as soon as possible.

18 So, I mean, I'm not going to sit here and make excuses
19 about anything that we should or shouldn't have done in the
20 past, Your Honor. It's not helping these people, you know, the
21 victims. And I am truly sorry to each and every one of them and
22 also to the vendors, the people we sold the product to, and, you
23 know, all that we put them through as far as having to recall
24 the product and deal with the product and then having the, you
25 know, reputation of all they had eggs that had to get recalled.

1 Maybe people would have switched grocery stores. I don't know.
2 But it's -- I guess I view it as more about the victims and what
3 they had to go through than what we've had to go through here.
4 So thank you, Your Honor.

5 THE COURT: Thank you, Mr. DeCoster.

6 I think we'll take a recess till two o'clock, and then
7 I'll come back, see if the lawyers have anything else they want
8 to add which I always do, and then I'll go ahead and start
9 imposing sentences. I'll start with the corporation first, and
10 we could do Peter and then Austin or the other way around. I
11 don't really care. We'll be in recess till 2. Thank you.

12 (Lunch recess at 1:11 p.m.)

13 THE COURT: Thank you. Please be seated.

14 Mr. Deegan, I think we overlooked Mr. Parisi's
15 presentation. You indicated at one point that he was going to
16 argue the constitutionality?

17 MR. DEEGAN: Your Honor --

18 THE COURT: And then you did and so --

19 MR. DEEGAN: And that's fine, Your Honor. We're going
20 to stand on our brief on that.

21 THE COURT: Okay. I didn't want to cut him short if
22 he wanted to say something.

23 MR. PARISI: I appreciate that, Your Honor, but we'll
24 rest on the brief.

25 THE COURT: Okay. Thank you. Okay. Is there

1 anything else that either -- any of the lawyers, excuse me,
2 would like to add at this point? Mr. Dornan?

3 MR. DORNAN: No, Your Honor.

4 THE COURT: Anything from you, Mr. Green?

5 MR. GREEN: No, Your Honor.

6 THE COURT: Mr. Deegan?

7 MR. DEEGAN: Nothing from the government, Your Honor.

8 THE COURT: Okay. Why don't we take the corporation
9 first. What is the status of the corporation, Mr. Green? Is it
10 in existence?

11 DEFENDANT AUSTIN DECOSTER: It exists, but it's
12 bankrupt.

13 MR. GREEN: Apparently it's still a structured, but
14 it's bankrupt.

15 THE COURT: I think Mr. DeCoster is probably using
16 bankrupt in the colloquial term, that it has no money. The
17 corporation hasn't filed for bankruptcy.

18 DEFENDANT AUSTIN DECOSTER: No. I'm sorry.

19 THE COURT: No, that's okay. That's okay.

20 DEFENDANT AUSTIN DECOSTER: I agree with you, Your
21 Honor.

22 THE COURT: Okay. With regard to Quality Egg, LLC,
23 we've already discussed the potential fine range. I'm -- I'm
24 comfortable with the parties' agreement on the fine. It might
25 not be exactly what I would have done in the absence of an

1 agreement, but this was a bargained-for agreement. Sounds like
2 it was a lot of bargaining by parties with equal standing and
3 representation and zealous advocacy. And it's certainly
4 extremely reasonable by any judgment. So whether I would have
5 gone a little bit higher, a little bit lower really isn't the
6 question. It was a bargained-for agreement. It's reasonable.
7 And I've always tried to adopt bargained-for agreements that are
8 reasonable in sentencing.

9 So it's my judgment that the corporation pay the fine
10 of \$6,790,000, and I note that that's already been paid in full
11 and that the corporation also pay a special assessment of \$400
12 on Counts 1 and 2 and \$125 on Count 3, and that was also paid a
13 year ago on June 3 -- almost a year ago, on June 3, 2014.

14 I was going to put the corporation on probation for
15 the maximum which is five years, but given the representation
16 that it's not really functioning, I'm going to go along with
17 what probation recommended, that the corporation will be put on
18 probation for three years. I'm also going to order that the
19 corporation make restitution in the agreed-upon amount of
20 \$83,008.19 pursuant to the exhibit and that restitution be joint
21 and several with the individual defendants.

22 Has the restitution been paid? That's probably going
23 to take a while because you have the various people you have to
24 pay it to. And I'll just order that the restitution be paid
25 pursuant to the exhibit.

1 MR. GREEN: I think that's satisfactory, Your Honor.

2 THE COURT: Okay. Thank you. And the corporation
3 forfeits the property set forth in the preliminary order of
4 forfeiture that I entered on November 18 of last year.

5 I want to advise the corporation you have a right to
6 appeal the sentence that I've imposed. If the corporation
7 decides to appeal, they need to file a written notice of appeal
8 no later than 14 days from the date the judgment is filed. If
9 the corporation can't afford to pay for a lawyer or for the
10 costs of an appeal, a lawyer will be appointed to represent the
11 corporation.

12 Anything further with regard to the corporation?

13 MR. DEEGAN: Nothing, Your Honor.

14 MR. GREEN: No, sir.

15 THE COURT: Okay. Thank you.

16 With regard to the two individual defendants, any
17 volunteers to go first?

18 MR. GREEN: We're standing here, Your Honor.

19 THE COURT: You're standing there, Mr. DeCoster.
20 Okay. I'll go ahead and sentence you first, but I'll tell you
21 what. With regard to the individual defendants, I'm going to do
22 something that I have never done before. And that is I'm going
23 to read into the record a redacted portion of the presentence
24 report taking out some names because it's forming a foundation
25 for my analysis of the Title 18, 3553(a) factors. And I'm not

1 going to include everything in the presentence report, but I
2 have a substantial amount of information that I'm going to read
3 into the record. And so it might be easier for you to be
4 seated, and then when it comes time to analyze some of the other
5 factors -- and you can actually -- I don't require defendants to
6 stand up. You can just remain seated. But I'm going to read
7 into the record some paragraphs of the presentence report, and
8 it's identical for both defendants. So this applies to both
9 Peter and Austin Jack DeCoster. And I'm going to give them some
10 subtitles.

11 Quality Egg provided false information and documents.
12 During every AIB audit between 2007 and 2010, Quality Egg and an
13 individual that I've redacted made significant
14 misrepresentations including material omissions to two AIB
15 auditors with regard to Quality Egg's food safety and sanitation
16 practices and procedures.

17 With respect to the documentation required for every
18 audit, Quality Egg directed the manufacture and falsification of
19 documents required for the audit with the intent that the
20 auditors and USFoods would rely on the fabricated documents. On
21 the days leading up to each audit, blank -- that's the redacted
22 person, neither one of which is the individual defendant --
23 identified numerous documents that were supposed to have been
24 completed monthly, weekly, or daily that were missing from
25 Quality Egg's files. Many of those documents then appeared in

1 the files on the day the auditor was to review them. On the
2 days leading up to the audit, blank, redacted, gave Quality Egg
3 employees blank, signed forms and instructed them to fill in the
4 missing information. Among the forms that were manufactured and
5 completed late at the direction of blank and others at Quality
6 Egg were preoperative sanitation reports, daily clean-up forms,
7 pest control reports, daily maintenance reports, and visitor
8 logs.

9 Both through documents and through oral
10 representations, blank and Quality Egg misled the AIB auditors
11 about the pest control measures that were in place in the
12 processing plants and layer barns. Blank and Quality Egg
13 represented to AIB auditors during the annual audits that
14 Quality Egg had a pest control program in place for plants 3 and
15 6 during the entire period between 2007 and 2010. In fact,
16 Quality Egg's retention of a pest control company was sporadic
17 over this time period. For various time periods between July
18 2006 and August 2010, Quality Egg had no pest control services
19 to deal with rodents or insects in the processing plants and had
20 no outside pest control services at all to deal with rodents in
21 the layer barns.

22 Paragraph 32, blank and Quality Egg also misled the
23 AIB auditors about the Salmonella prevention strategies and
24 measures used by Quality Egg for plants 3 and 6 with the intent
25 that the auditors and USFoods would rely on those

1 misrepresentations. The USFoods addenda that the AIB auditors
2 completed required Quality Egg's plants to have in place, quote,
3 product testing protocols and appropriate intervention
4 technologies to reduce or limit the amount of Salmonella found
5 in fresh eggshells and that such measures be included in Quality
6 Egg's HACCP plan. For each AIB audit between 2007 and 2010,
7 blank and Quality Egg provided the AIB inspector with documents
8 that indicated Quality Egg performed flock testing to identify
9 and control Salmonella. In fact, no such flock testing was ever
10 done.

11 For the August 2009 AIB audits for plant 3 and 6,
12 blank and Quality Egg made further misrepresentations reflected
13 in the USAFoods addenda that Quality Egg had a Salmonella
14 program in place for layer and pullet barns. Moreover, blank
15 and Quality Egg did not take preventive measures or employ
16 strategies to reduce or limit Salmonella in eggs -- in Quality
17 Egg's table eggs when they received positive results from the
18 sporadic SE environmental testing and necropsies that Quality
19 Egg did perform.

20 With regard to Quality Egg bribing a U.S.A. official,
21 I'm just going to read a portion of the presentence report.
22 Again, all -- the blanks are individuals other than the two
23 individual defendants. Blank knowing and intending that such
24 cash would be used by blank to bribe a U.S.D.A. inspector.
25 Specifically, blank instructed Quality Egg's chief financial

1 officer to give blank \$300 from Quality Egg's petty cash fund,
2 and blank provided the bribe to the inspector in an attempt to
3 corruptly influence the inspector with regard to an official
4 act, that is, to exercise his authority to release pallets of
5 retained eggs for sale by Quality Egg without reprocessing them
6 as required by law and U.S.D.A. standards. On at least one
7 additional occasion in 2010, blank and blank provided a bribe to
8 the same inspector for the same purpose. The inspector is now
9 deceased.

10 In providing the bribes, blank and blank were each
11 acting within the scope of employment at Quality Egg and were
12 acting with intent to benefit Quality Egg.

13 Paragraph 48, the prosecutor's investigation has
14 revealed no evidence that prior to the bribe made on or about
15 April 10, 2010, either Peter or Austin DeCoster had knowledge
16 that the bribe was going to occur.

17 In a section Quality Egg changed the Julian dates and
18 package of eggs and sold misbranded eggs in interstate commerce,
19 I'm just going to read a couple of paragraphs. Begin -- on
20 paragraph 54, beginning no later than January 1, 2006, and
21 continuing until approximately August 12, 2010, Quality Egg
22 personnel under the direction and with the approval of blank
23 shipped some eggs in interstate commerce to various wholesale
24 customers with deliberately mislabelled processing dates and
25 expiration dates. In fact, some of the eggs were older than

1 indicated by the dates on the egg cases. Some of the eggs were
2 also shipped with no labeling so that in some instances labeling
3 with inaccurate processing and expiration dates could be sent to
4 wholesalers and affixed to the cases at their destination.

5 Paragraph 56 from the presentence reports of the two
6 individual defendants, there were a number of ways under the
7 direction and approval of blank Quality Egg mislabelled older
8 eggs with newer processing and expiration dates prior to
9 shipping the eggs to customers in California, Arizona, and other
10 states. Sometimes Quality Egg personnel did not put any
11 processing or corresponding expiration dates on the eggs when
12 they were processed. The eggs would be kept in storage for
13 several days and up to several weeks. Then just prior to
14 shipping the eggs, Quality Egg personnel labelled the eggs with
15 processing dates that were false, in that the dates were more
16 recent than the dates the eggs were actually -- had been
17 processed with correspondingly false expiration dates.

18 In other instances, Quality Egg personnel relabelled
19 older eggs with processing dates that were false, in that the
20 dates were more recent than the dates on the eggs that had
21 actually been processed with corresponding false expiration
22 dates. Quality Egg personnel did this by removing the original
23 labeling and affixing new, false labeling to the eggs and also
24 by placing new, false labeling over existing labeling on the egg
25 cases.

1 In other instances, Quality Egg personnel sent new
2 labeling with processing dates that were false, in that the
3 dates were more recent than the dates that the eggs had actually
4 been processed with corresponding false expiration dates with
5 the drivers of the trucks in which the eggs were shipped so that
6 the wholesale customer could apply the new labeling at the
7 destination.

8 Through these mislabeling practices, Quality Egg
9 personnel, including blank, intended to mislead at least state
10 regulators and retail egg customers regarding the age of the
11 eggs. These mislabeling practices had the effect of misleading
12 state regulators and retail egg customers regarding the age of
13 these eggs.

14 Paragraph 59, the mislabeling of eggs at Quality Egg
15 with inaccurate dates was a common practice and was well known
16 among several Quality Egg employees. It was an ongoing practice
17 before blank became involved in Quality Egg sales in 2002.

18 Moving on to another category, Quality Egg failed to
19 meet FDA regulatory standards, between August 12, 2010, and
20 August 30, 2010, the FDA conducted a regulatory inspection of
21 the following Quality Egg facilities: Layers 1, 2, 3, 4, and 6
22 and the feed mill. Many egregious unsanitary conditions were
23 observed. Items noted were live and dead rodents, parentheses
24 mice, parentheses, and frogs found in the laying areas, feed
25 areas, conveyor belts and outside of the buildings; skeletal

1 remains of a chicken on a conveyor belt; numerous holes in the
2 wall and baseboards in the feed and laying buildings; missing
3 vent covers; rodent traps were broken, did not have bait in
4 them; and some traps still had dead rodents in them; manure
5 piled to the rafters in one building which was below the laying
6 hens; a room was so filled with manure that it pushed the screen
7 out the door, allowing rodents to access the building; and live
8 and dead beetles and flies throughout the chicken barns.

9 Paragraph 67, based upon the inspection, the FDA
10 issued a form 483 inspectional observations report, parentheses,
11 483 report, and subsequently issued a more detailed
12 establishment inspection report. The following observations
13 were included in the 483 report: "A," DeCoster, meaning the
14 company, not any individuals, failed to implement and follow its
15 written SE prevention plan by failing to effectively implement
16 various aspects of its egg bio-security plan related to dogs,
17 cats, rodents and other wild animals and manure management; B,
18 DeCoster, meaning the company, failed to take steps to ensure
19 that there was no introduction or transfer of SE which is the
20 Salmonella into or among poultry houses including with regard to
21 inadequate doorway accesses, protective clothing, cleaning and
22 sanitation of equipment, uncaged chickens using manure eight
23 feet high to access the laying area, and a door being blocked by
24 excess manure; C, DeCoster, then meaning the company, failed to
25 achieve satisfactory rodent and pest control; D, DeCoster, again

1 meaning the company, failed to adequately document the
2 monitoring of rodent and other pest control measures; E,
3 DeCoster, meaning the company, failed to adequately document
4 compliance with bio-security measures.

5 Now, I read those provisions of the, in my view,
6 unobjected-to portions of the presentence report. I say in my
7 view because of that footnote number 1 in document 89. You
8 know, I haven't ever heard any of the defendants, the
9 corporation or the two individual defendants, object in this
10 sentencing proceeding or after the filing of your document 89
11 withdrawing your objections that those paragraphs were in any
12 way objectionable to you. I guess you don't think they're
13 relevant. I do. So whether it constitutes relevant conduct or
14 the history and characteristics of how the defendants ran a
15 company, I think they're highly relevant to sentencing. And I
16 think all of those examples are beyond substantially
17 aggravating. They're incredibly aggravating.

18 And that's what the defendant argued in their
19 sentencing brief. I was just a little bit more specific by
20 referring to specific paragraphs that in my view are unobjected
21 to in the presentence report because I'm just looking at the
22 table of contents of the government's brief as a shorthand.
23 Believe me, I've read and reread all of the briefs and
24 everything else filed in this case. But the government said the
25 nature, circumstances, and seriousness of the offense, A, the --

1 which is a new one, the seriousness of the harm caused by the
2 outbreak. I find that to be aggravating. This was a very
3 serious outbreak. It affected over 1,900 people, and those are
4 only the people that reported it. I don't recall the exact
5 percentage, but it is in the sentencing record. It's in either
6 a document from experts or somewhere I read it -- and I only
7 read things in the sentencing report -- in the sentencing
8 record -- but I think it's maybe the Center for Disease Control
9 or some government agency estimates that for every single person
10 who files a formal notice of Salmonella poisoning, I don't
11 remember the exact number, but there are many, many more who
12 actually get Salmonella poisoning that never report it. So
13 1,900 is an incredibly conservative estimate. So there was
14 serious harm caused by this outbreak.

15 And if you don't find the number of people that were
16 harmed to be serious, all you had to do is listen to the victim
17 parent who test -- he didn't testify, but he gave his victim
18 impact statement. And if anybody thinks Jason Tucker's son has
19 not been caused harm really beyond the wildest imagination when
20 you read the victim impact statement, hearing it from
21 Mr. Tucker, if he was the only victim, I would find it to be
22 incredibly aggravating. But he's one of many, many, many
23 others.

24 Subsections B and C of the government's brief were
25 Salmonella contamination of Quality Egg and subsection C is poor

1 food safety practices at Quality Egg. And those were the
2 examples that I read from the presentence report. And believe
3 me, I left more out than I read in because I didn't want to keep
4 you all here for another couple hours.

5 Now, it is true that other than the single incident
6 that I found with regard to Peter DeCoster, it is true that
7 there is no evidence that Austin Jack DeCoster or Peter DeCoster
8 had actual knowledge of all of the horrendous sanitary
9 conditions related to and unobjected to in the presentence
10 report. But how you could be a chief operating officer and
11 somebody who's been described as very hands-on in terms of
12 Austin Jack DeCoster, it's shocking to me that somebody could
13 run a company like this and not know about it.

14 But I'm giving you the benefit of the doubt because
15 there is no evidence that you knew about it. You darn well
16 should have known about it. I don't know how you could be chief
17 operating officer and know that there's this massive
18 circumventing of food safety regulations. I guess it's
19 possible. But it just doesn't -- doesn't seem right to me, and
20 as Mr. Green said, using his analogy, you two were the captain
21 of the ship. And the ship went down. But it went down because
22 you allowed your employees to engage in this, to me, a culture
23 of rampant violations of safety regulations.

24 So those are what I see as the aggravating factors. I
25 think there are mitigating factors in this case too. They're a

1 little bit different for each defendant, although some are the
2 same.

3 Austin Jack DeCoster, talk about a self-made man.
4 Boy, if you looked up self-made man in the encyclopedia, your
5 picture should be next to it, Austin Jack DeCoster. I mean, you
6 started with nothing. And from what I can tell, nobody ever
7 gave you anything. You earned it the hard way, and you became
8 fabulously wealthy. And I don't begrudge you that. I admire
9 the fact -- and you worked hard. You worked incredibly hard.
10 And that's a mitigating factor. Heck, I think you're still
11 probably working. You're 80 years old. You could have retired
12 years ago, but you stuck with it through all this kind of messy
13 stuff. That's a mitigating factor.

14 You've both been very good in doing charitable work.
15 And, you know, I was giving your lawyers a hard time about the
16 percentages. I just like to give lawyers a hard time once in a
17 while. But Mr. Green was absolutely right, and Mr. Dornan. You
18 both have done extraordinary things. And Mr. Dornan pointed out
19 in the brief that Peter DeCoster not only has done extraordinary
20 charitable work, but he did it at substantial personal safety
21 risk. I mean, it's one thing to give somebody some money. It's
22 another thing to travel to these distant lands and engage in the
23 work yourself. So that is commendable.

24 And while I have sentenced a few white-collar
25 defendants before, I've never seen anybody that went to the

1 effort not just to give money because if you have a lot it's
2 easy to give money. And as Chief Judge Reade pointed out in
3 another case, it's really easy to give away your money when you
4 stole it from other people which isn't the case here, but it's
5 true of so many white-collar defendants. I mean, they actually
6 have the audacity to come into court and say look at our
7 charitable good work when, in fact, they stole the money from
8 somebody else which is exactly why they're in federal court. So
9 that's not your case there.

10 So I think that is mitigating. And I think in Peter's
11 case it's even more mitigating because you put yourself at risk.
12 In other words, you put your money -- your mouth where your
13 money was. You put your feet where your money was. You went to
14 these far-off distant lands, and you've each helped innumerable
15 people to have a better life.

16 With regard to Austin Jack DeCoster, you know, I think
17 the age is mitigating. You're 80 years. I haven't sentenced --
18 I think I've sentenced a handful of people in their 70s. If
19 I've sentenced somebody in their 80 -- who's 80, I don't recall
20 it. It's mitigating. You're less likely to recidivate. It's
21 generally mitigating. How mitigating, I don't find it extremely
22 mitigating.

23 I don't find your health issues to actually be really
24 mitigating at all. You're in better health than most
25 80-year-olds, and there's nothing about your current health

1 status that I find mitigating. You're doing a great job of
2 managing your health concerns.

3 I don't actually find the 1 -- I know both lawyers on
4 the defense side argued this. I don't find the lack of
5 knowledge to be mitigating because Congress didn't find it to be
6 mitigating. And the sentencing commission didn't find it to be
7 mitigating. And what I mean by that is had Congress wanted to
8 mitigate the punishment where there was no actual knowledge like
9 in this case, they could have done that.

10 But Congress chose just the opposite that. Congress
11 said we're going to impose a sentence of -- potential sentence
12 of zero to one year even when there is no knowledge. And the
13 sentencing commission did the same thing. Sentencing commission
14 is really good about putting in enhancements for aggravating
15 factors, so if the sentencing commission wanted to make this --
16 wanted to make actual knowledge an aggravating factor, they
17 could have, or the absence of knowledge a mitigating factor, the
18 sentencing commission could have. They've done it in
19 innumerable ways for other crimes. But they didn't.

20 So I don't see the lack of knowledge as mitigating. I
21 think if you have knowledge, it would potentially be
22 aggravating, but I don't see it as mitigating in this case for
23 the reasons I just indicated.

24 With regard to your constitutional argument, I think
25 you did a great job raising it except for the Apprendi/Alleyne

1 thing I think was a little bit silly, and I think we -- you
2 might not like my term silly, but it was silly because if you're
3 right on your constitutional argument, there is no Alleyne or
4 Apprendi issue in the case. It just totally disappears.

5 You may well be right, Mr. Green. And, Mr. Hopson,
6 you did an excellent job briefing it. But I don't think you
7 are. The Eighth Circuit may very well agree with you. More
8 power to you when you take it there. But I don't find there's
9 any constitutional impediment to imposing a sentence of
10 incarceration. And I'm going to file a pretty lengthy opinion
11 indicating why.

12 But I just want to tell you this. I did that in
13 response to the motion that you filed. I started working on it
14 right away. It had nothing to do with what the ultimate
15 sentence would have been. I could have come to the conclusion
16 of giving probation. I still would have had to have researched
17 that issue because I needed to know the answer to it. And
18 because I know myself and I know I wasn't going to make a
19 decision until I actually got in the courtroom to impose the
20 sentence, I analyzed your arguments to the best of my ability,
21 and I just conclude otherwise.

22 I think you've got a really kind of novel argument and
23 wish you well on appeal with it. And you may get some relief
24 from the Eighth Circuit, but I'm not going to bore you with all
25 the reasons why. But I just don't think you're right.

1 I'm open to the possibility that you could be, but my
2 call is that you're not. So that removes any barrier to
3 incarceration if I were to decide that that was appropriate.

4 So I think I've outlined -- oh, and with Austin Jack,
5 I do find it aggravating that he's back in front of me again ten
6 years later, but I don't find it substantially aggravating. I
7 agree with you, Mr. Green, that you don't want me to give it any
8 weight. I'm giving it a little bit of weight, but I'm not sure
9 it actually has -- it would only have a teeny little impact on
10 what my actual sentence would be.

11 So here's the hard part. I've outlined what I see as
12 the aggravating factors. I've outlined what I see as the
13 mitigating factors. I think the aggravating factors are
14 powerful. I think the mitigating factors are significant. So I
15 have to balance those.

16 And Judge Calabresi who's a senior judge on what? The
17 Second Circuit Court of Appeals or the First Circuit? I always
18 get confused. He was the former dean at Yale. He wrote a
19 one-page law review article, shortest law review article in the
20 history of law review articles, and it was a tribute to another
21 judge. And he said that what judges do is we weigh that which
22 cannot be measured. We weigh that which cannot be measured.
23 And that's the best description I've ever heard of balancing the
24 Title 18, 3553(a) factors. You can't put them on a scale and
25 say this is worth two coupons for probation and this is worth

1 one month of incarceration. It doesn't work that way. You have
2 to look at all of the factors. You balance them as best you
3 can. Every judge I know does the best job they can at
4 sentencing. Every judge I know takes sentencing super
5 seriously. We wouldn't all arrive at the same opinion. I think
6 many judges would look at these factors and do something
7 different than what I'm going to do.

8 Some would be harsher. So that ought to be good news.
9 I'm not going to sentence at the statutory maximum, although I
10 think given the aggravating factors in the case, I'd be well
11 within my discretion to sentence at the statutory maximum. On
12 the other hand, I'm not going to impose probation.

13 I thought about it, and when we took our last break, I
14 was still thinking about it. But I'm not -- but I don't think
15 that would be -- well, let me say this. It wouldn't be an
16 unreasonable sentence because I think anything within the
17 statutory range for the facts of this case would be a reasonable
18 sentence which is maybe why the government didn't make a
19 recommendation. I don't know. Sometimes they recommend.
20 Sometimes they don't.

21 I'm going to impose the same sentence for both
22 defendants. While I think Austin Jack DeCoster's prior
23 conviction is one way to distinguish Peter DeCoster, Peter
24 DeCoster in many respects was more hands-on because he was the
25 chief operating officer.

1 On the other hand, I was more impressed by his travel
2 to distant lands to help people. And, you know, he didn't do it
3 staying at Hyatt Regencies. Did it the hard way, living with
4 the people he was helping.

5 So for Peter DeCoster and Austin Jack DeCoster, in
6 balancing the 3553(a) factors that I've talked about, it's my
7 judgment that you're hereby committed to the custody of the
8 Bureau of Prisons to be imprisoned for three months followed by
9 a one-year term of supervised release.

10 While you're on supervised release, you'll have the
11 standard conditions of supervision including you can't violate
12 any state, local, or federal law and other standard conditions
13 set forth in the judgment. I think I've previously noted I
14 guess with regard to the corporation you've all paid -- I'm
15 going to impose the hundred dollar -- I'm sorry, hundred
16 thousand dollar fine which has already been paid, special
17 assessment of \$25 which has already been paid.

18 Is there a facility you'd like me to recommend? I
19 think at three months BOP will probably pick a county jail would
20 be my guess.

21 MR. DORNAN: At Clarion, Your Honor, which is in Iowa.

22 THE COURT: Okay. See, does the BOP have a contract?

23 MR. DORNAN: I don't know.

24 THE COURT: Okay. Well, I'll just say -- well, I'm
25 just going to leave it to the BOP. But I am expressly

1 indicating to the Bureau of Prisons that I don't believe either
2 defendant should serve their time in a halfway house which is a
3 residential reentry center but in a either Bureau of Prisons
4 facility which would be the totally minimum security facility or
5 in a county jail if the BOP doesn't do the Bureau of Prisons
6 facility.

7 But I'm going to give each of you the privilege of
8 self-reporting. And here's how that works. The Bureau of
9 Prisons will notify the U.S. marshals. They'll notify your
10 lawyers. You'll be notified about where and when to report. If
11 you don't report at the time and place designated, that's a --
12 and it's willful, that's a separate -- that's actually a felony
13 offense that could subject you to a 60-month sentence that would
14 be consecutive to the 3 months that I imposed and an additional
15 fine of up to a quarter of a million dollars.

16 I'm going to order that you be released pending
17 appeal. I'm not actually going to stay my judgment because I
18 don't have to stay it. There's actually a provision of release
19 which comes into play. I just looked it up over the noon hour.
20 I recalled it from my old days as a magistrate judge. It is
21 Title 18, section 3143(b), subsection (a) and (b), release of --
22 release or detention pending appeal by the defendant. I'm
23 assuming you're going to be filing a notice of appeal. This
24 talks about who has filed an appeal, but I assume you're going
25 to be filing one. You should. I would if I were you.

1 But I have to find by clear and convincing evidence
2 that you're not likely to flee or pose a danger to the safety of
3 any other persons or the community. I find that. I also have
4 to find that an appeal would not be for purposes of delay. I'm
5 willing to find that. I also have to find that an appeal would
6 raise a substantial question of law likely to result in
7 reversal, a sentence that does not include a term of
8 imprisonment, or a reduced sentence of imprisonment less than
9 the total time served plus the duration of the appeal process.
10 So I'm finding all three.

11 So it has the effect of staying my ruling. You won't
12 have to report to serve this sentence if at all until after
13 you've exhausted your appeals because I may be wrong about my
14 ability to have you incarcerated. And the last thing in the
15 world I would want would be for you to serve that time and then
16 find out later on that I had goofed because you can't get your
17 period of incarceration back. So it has the effect of staying
18 my ruling, but because a stay isn't actually authorized by a
19 statute and this is, I'm doing it this way.

20 You each have a right to appeal. You can exercise
21 your right to appeal by filing a written notice of appeal with
22 the clerk of our court no later than 14 days from the date your
23 judgment is filed. If you can't afford to pay for a lawyer, pay
24 for the costs of an appeal, those costs will be paid on your
25 behalf.

1 Is there any need to stagger the terms? It's not like
2 you're taking care of the same small children. And I don't
3 really understand who's really working and who isn't.

4 MR. GREEN: Would Your Honor indulge me to talk with
5 my client for just a moment?

6 THE COURT: Sure.

7 MR. GREEN: Your Honor, I'm wondering if you would be
8 good enough -- and I don't have the name of the facility on the
9 tip of my tongue but to recommend a facility near where -- or
10 near as possible to where --

11 THE COURT: In Maine, close to Maine? Yeah, I'll be
12 hap --

13 MR. GREEN: So his wife can --

14 THE COURT: Visit.

15 MR. GREEN: -- have contact with his wife.

16 THE COURT: Yeah, I'll be happy to recommend either a
17 local facility as close to his home as possible that the Bureau
18 of Prisons has a contract with -- it has to be somebody that the
19 BOP contracts with -- or a federal facility as close to Maine as
20 possible consistent with Austin Jack's security and custody
21 classification which I'm sure will be as low as there possibly
22 is, and it would be a prison camp. And do you want me -- I'm
23 just going to -- yeah, okay. Mr. Dornan?

24 MR. DORNAN: You asked about their work relationship.

25 THE COURT: Yeah.

1 MR. DORNAN: They are involved in a project in Ohio
2 which is a large construction project.

3 THE COURT: Tell me it's not an egg processing plant.

4 MR. DORNAN: Well, they're not involved in the egg
5 production part. They're just involved in the construction
6 aspect of it. But they do both communicate with the individuals
7 who are doing the construction. If one of them was
8 incarcerated -- if both of them were incarcerated --

9 THE COURT: At the same time it would make it more
10 difficult.

11 MR. DORNAN: -- it would present a problem.

12 THE COURT: Okay. I'll be glad to stagger it then.

13 MR. DORNAN: Thank you, Your Honor.

14 MR. GREEN: I misspoke. Mr. DeCoster through me
15 requests that he be permitted to serve his sentence near his
16 home in Iowa where his wife will reside.

17 THE COURT: Okay.

18 MR. GREEN: That would be near Clar -- I don't know
19 anything about Clarion.

20 THE COURT: Yeah. You don't know your -- you haven't
21 mastered Iowa geography yet, Mr. Green?

22 MR. GREEN: No, not yet, although I'm a Minnesota --

23 THE COURT: Well, you just take -- you go out the
24 door. You get on the metro. You take it to -- the red line to
25 Clarion, and you get off, and you're right there. It's really

1 not too difficult.

2 Miss Sturdevant, do you know where the closest
3 facility is off the top of your head?

4 MS. STURDEVANT: As far as county jails, they will
5 contract on a one-on-one basis, so we would have to get J and Cs
6 to them, so I don't know which one would accept it. We've used
7 Fort Dodge in the past.

8 THE COURT: Yeah, okay. Well, I'll just recommend --
9 is that what you want, Mr. Dornan, too? I don't actually know
10 where your client lives so . . .

11 MR. DORNAN: He does live in Clarion, Judge.

12 THE COURT: Okay. So here's what I'll do. I'll
13 recommend a facility that the Bureau of Prisons has a contract
14 with as close to Clarion, Iowa, as possible. That's going to be
15 closer than the nearest minimum security facility which is in
16 Yankton, South Dakota, which is a good 90 minutes from here
17 going west. So I'll recommend a local facility.

18 And I'm going to recommend that -- because of his age
19 that Austin Jack DeCoster serves his term first and then once
20 he's out that Peter would then have 30 days to report to the
21 facility that he's designated to, and that would help with the
22 construction project in Ohio.

23 MR. DORNAN: Judge, on second thought, because it's
24 unclear as to where the facility would be, Mr. DeCoster would
25 prefer Yankton.

1 THE COURT: Oh, he would prefer Yankton, okay.

2 MR. DORNAN: Yes.

3 THE COURT: Okay. Then I'll recommend for Peter
4 DeCoster that he serve his time at the facility in Yankton. I'm
5 not actually sure that on a sentence this low that the BOP will
6 actually designate Yankton. They might designate a local
7 facility. But whatever facility gets designated, you'll both,
8 as I indicated, have the privilege of self-reporting.

9 Is there anything further on behalf of Peter DeCoster,
10 Mr. Dornan?

11 MR. DORNAN: No, Your Honor.

12 THE COURT: Okay. Thank you for your representation.

13 Mr. Green, anything further on behalf of Austin Jack
14 DeCoster?

15 MR. GREEN: No, sir.

16 THE COURT: Okay. Thank you and your team for your
17 representation.

18 Mr. Deegan, anything on behalf of the United States
19 that I may have forgotten?

20 MR. DEEGAN: I don't know that the Court forgot this.
21 There was the issue of restitution. We agreed with the
22 individual defendants in the plea agreements that it could be
23 apportioned only against Quality Egg if Quality Egg had the
24 funds to pay it, so it's up to the Court's discretion whether or
25 not it would need to be imposed against the --

1 THE COURT: Well, because I don't know what Quality
2 Egg has, I ordered Quality Egg to pay it. I ordered it joint
3 and several. So I'm going to order each defendant to pay it
4 joint and several. If Quality Egg has the funds to pay it,
5 that's fine. But the restitution will be pursuant to the
6 stipulated restitution in Exhibit 8.

7 Anything else?

8 MR. DEEGAN: No, Your Honor. Thank you.

9 THE COURT: Miss Sturdevant, anything else I've
10 forgotten?

11 MS. STURDEVANT: No, Your Honor.

12 THE COURT: Okay. Good luck to both of you, and we'll
13 be in recess. Thank you.

14 (The foregoing sentencing was
15 concluded at 2:53 p.m.)
16
17
18
19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript
22 from the record of proceedings in the above-entitled matter.
23
24

25 S/Shelly Semmler
Shelly Semmler, RMR, CRR

4-25-15
Date